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PETTY BUSINESS IN CONGRESS

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In the national House of Representatives that adjourned on March 4, 1931, there were introduced 18,356 bills and resolutions, in the Senate 7,080, making a total of 25,436 in two years. Favorable reports were made in the House on 2,734. Of these measures, 747 died on the House calendars, that is, were not acted upon. Measures that passed the House and were not acted upon in the Senate numbered 537; those that passed the Senate and not the House, 381; making a total of 913 that fell between the branches.

The measures that became law numbered 1,524, a figure to be reconciled with the previous figures by taking into account the instances where identical bills were introduced in House and Senate and one of them was laid aside. It is to be borne in mind that individual pension bills are combined in two or three big bills, which makes the showing not quite so bad as it appears on the face. This, however, does not alter the fact that more than one quarter of the measures reported to the House were not acted upon at all, and that between 800 and 1,000 passed one branch and were not acted upon by the other.

Granted that some of these measures ought not to have been reported, and that there was no loss because they were not enacted, it still cannot be denied that a lamentable amount of committee effort went for naught; that other time was spent in vain in House or Senate; and that many, very many, citizens were disappointed. Two thirds of the measures lost were private bills, so that several hundred persons were denied the justice,

equity, mercy, or generosity that committees had held to be deserved.

Two hundred and more were public bills. Many of these related to administration of existing law, so that by reason of their failure the governmental agencies concerned were by that much the less able to function as efficiently as committees had held to be desirable. Others were expected to inure to the safety of the public, to its protection, to its prosperity. Few, very few, concerned new policies—the things where public opinion might have divided between approval and blame.

In the first session of the present Congress, 1,674 bills and resolutions were reported favorably to the House by committees. At adjournment on July 16, after seven and a half months of work, 826 had been acted upon, leaving 848 with small opportunity for consideration next winter. The greater part of the short session will be given to the big appropriation bills, and considering the additional measures that will be reported, it does not now look as if the total percentage of action will be anywhere near what it was in the Congress ending last year.

The situation grows worse. In the first session of the Sixty-ninth Congress, 90 per cent of the measures reported to the House were acted upon; in that of the Seventieth, 89 per cent; in that of the Seventy-first, 67 per cent; in that of the present Congress, 49 per cent. To be sure, conditions change from Congress to Congress. In some sessions, as in that of this year, a few big questions deserve and get an unusual part of the available time, and in some Congresses many more bills are introduced than in others. Yet, taken by and large through the years, Congress becomes less able to cope with its work.

To give the reasons and suggest remedies is my purpose here. Some of the former, although important, may be dismissed quickly. First among them is the steady growth in the occasion for legislation. Not only does society become more and more complex, but also the scope of federal activities constantly expands. At the moment there is loud outcry against this by reason of the increase in the cost of government, but it will prove largely futile. Cynicism does not prompt this prediction. It is based on the belief that population will grow, that science will keep on marching, that invention will tread on the heels of invention,

that there will be more and more of specialization, that there will be more and more need by individuals, by groups, by classes, by regions, of protection, of justice, the chief end of government.

Then there is the steady increase in demand that the federal government take over functions hitherto performed by the states, or engage in wholly new functions instead of the states. Deplore it as you will—and all thoughtful men ought to deplore it—the centripetal force is stronger than the centrifugal force in social relations, and centralization is the order of the day. Already we near a million as the total of our citizens on the federal pay-roll. Steadily the spread of federal activities requires more in the way of federal law.

The particular aspect of this that may here concern us appears in the fact that as the size of the federal machine grows, it does more and more damage to individual citizens. All machines are sure to cause accidents or otherwise inflict injury. For this the federal government admits no responsibility under common law. It adheres to the ancient rule, "The king can do no wrong." Time was when an absolute monarch could work his will at pleasure. Even if without intention or knowledge his instrumentalities of government injured one of his subjects, the principle still applied. So the subject had no right to bring suit against the monarch or his agents. The theory survives, whether the nation be monarchy or republic. The theory is that a citizen is, so to speak, a partner with all his fellow citizens, and were he to sue the partnership, he would be suing himself with the rest; and a man may not sue himself.

The theory may be logical, but it is not sensible. Some of our states have recognized its absurdity in application, and in greater or less degree have put the courts at the command of injured citizens. Even in these cases, or at any rate in some of them, there remain illogical discriminations. Progress, however, is being made, and in another generation or two it may be generally established that an injured man suffers just the same whether the man who hurt him draws his salary from the government of city, state, or nation, or draws it from a private employer, and should be compensated regardless of who pays the bill.

The national government has taken a timid and halting part

in the reform. Seventy-seven years ago, it established a Court of Claims with limited jurisdiction. There has been some enlargement of the powers of this tribunal, but it still may make award only in the field of contract. For claims in tort, that is, for injuries done to person or property, the victim may not look to the Court of Claims for relief. For a long time, his only recourse was to Congress, and that is still the case save for the limited power of settlement given to some of the departments where the damage is trifling. Here is to be found the chief source of the petty business of Congress.

For claims of all sorts and other proposals relating to individuals as distinguished from the public at large, the House has what is known as the Private Calendar. When the recent session adjourned, there had been placed on this calendar 994 bills, 360 of which were acted upon, leaving 634 as unfinished business, with no likelihood that half of them will be reached in the short session this winter or that a quarter will also pass the Senate. Of those not acted upon, the Committee on Claims had reported 419; Military Affairs, 80; Naval Affairs, 55; War Claims, 28; Public Lands, 19; Indian Affairs, 11; Foreign Affairs, 8; Public Buildings and Grounds, 3; District of Columbia, 3; Pensions, 2; Judiciary, 2; with one each from Agriculture, Coinage, Weights and Measures, Insular Affairs, and Interstate and Foreign Commerce.

Not all of these were bills "for the relief" of somebody, which usually means for injury. For instance, some of the bills from the committees on military affairs and on naval affairs were for awarding medals, authorizing transfers of officers, correcting ratings or records, and similar things. Those from Public Lands mostly related to land titles. Far the greater part of the measures on the Private Calendar, however,—perhaps more than nine-tenths—contemplate the payment of money out of the public treasury for injury of some sort.

The damages involved may run from a few cents to straighten out the accounts of some official up to tens, or even hundreds, of thousands of dollars in the case of such an accident as that of collision between a naval vessel and some privately owned steamer. Far the greater part of them, however, are for less than \$10,000, and many are for less than \$1,000.

It is hard to see how any reasonable man with any sense of proportion can find ground for insisting that Congress continue to burden itself with the little claims. To do so is penny wise and pound foolish. The time they take for the work of committees, for that of the House itself, and of the Senate, costs more than is saved, as matters go now, and in my judgment more than would be saved if all the petty claim measures reported by committees became law. The defensible remedy is to authorize the various departments and bureaus concerned to settle all claims for less than \$2,000. For myself, I would go farther and make it \$3,000, or even \$5,000. All of the departments and bureaus have legal counsel. Persons who have dealt with them will testify that they have the interests of the government at heart, and the unkind will say they are "hard-boiled." The only danger would be that of political pressure in behalf of unworthy claimants. Political pressure is not, however, wholly lacking in House and Senate, though it would be quite wrong to say it very often results in undeserved appropriations. What reason is there to think that it would swerve the judgment of the lawyers and officials in the departments and bureaus more than it now does? My understanding is that all of the bills appearing on the Private Calendar have been referred to the department or bureau concerned, for advice on the merits. When they are reached for consideration by the House, in practice, despite a recent change in the rules, one member, or at most three members, can block them, and this is almost invariably done if the committee's printed report accompanying the bill shows that the department or bureau has advised against it. This means that in actual effect the judgment of department or bureau largely prevails. Why not let it be final, at least in petty matters?

This was the view reached by Representative Underhill of Massachusetts while he was chairman of the Committee on Claims. After hard work, he succeeded in getting a bill to that end through House and Senate. President Coolidge, however, did not sign it, either because of some technical defect or for some other reason not disclosed, inasmuch as he used the pocket veto. To pass a bill avoiding whatever may have been the obstacle might well be an early action by Congress.

The larger the amounts involved, the greater the apparent

difficulty of determining what should be done. Yet if nothing but justice is involved, what reason is there why we should treat torts where the government is a party any differently from other torts? Whether the damage is ten dollars or ten million dollars, if only private citizens are concerned we leave the matter to the courts. They pay no attention to amounts. Legal principles alone concern them. How does the fact that taxpayers are to foot the bill affect the question of what is right, and therefore just?

If it be purely a question of justice, nothing can be worse than to leave it to a legislative body, particularly a large body like the House of Representatives. Parliamentary history abounds in instances of the miscarriage of justice at the hands of legislators. Their conditions make even-handed justice impossible. They are swayed by emotion, by prejudice, sometimes by passion. They are chosen as partisans. Whether in committees or in the House itself, they ignore the ordinary rules of evidence. Hearsay testimony is unquestioned. In committees, there is almost never the orderly procedure that regularly prevails in courts of law. Often it is impracticable to give time enough for full and fair presentation of a case. Sometimes witnesses are bullied shamefully. Sometimes witnesses are not heard at all, nor is there chance for any oral argument, the work being so heavy that, as in the case of the Committee on Claims, reliance must be for the most part on briefs or their equivalent. In the House itself, appeals to sympathy get a ready ear.

On the other hand, the situation has invited, perhaps compelled, resort to a system that, so far as I know, is unique in legislative bodies and their parliamentary practice. Possibly it began with James R. Mann. If it was conceived earlier than his time, I am not so informed. Mr. Mann took a meticulous interest in the workings of the government. This led him to become probably better acquainted with its details than any other man of our day. In order to make his knowledge helpful, he had a capable secretary examine every bill reported to the House and bring to his attention questionable provisions. If he concluded that the committee had erred, he suggested amendment on the floor or opposed the bill outright, thereby preventing much unwise legislation and saving a great deal of money. When his strength waned, the work was taken over by Joseph Walsh of

Massachusetts, who further proved its utility. Out of this came the informal organization of a group of objectors, a few from each party, who now for some years have prepared themselves to criticize all the bills on the Private Calendar and also those on the Consent Calendar.

It should be explained that in 1909 the House created a calendar on which any member might place a reported bill that he hoped would meet with no opposition whatever. This calendar was to be taken up on two days of each month. If objection was made when a bill was first reached, the measure was stricken from the calendar, but might later be returned for a second chance. Since on either occasion any one member could block the bill by objecting, this was called the Unanimous Consent Calendar. It proved that the arrangement gave too much power to a single unreasonable, prejudiced, or angry member, and in 1924 the rule was changed so that the second time a bill was reached, three objections would be necessary, and the title was accordingly changed to Consent Calendar.

This calendar permits disposing of much petty business, and has proved a decided gain, but it has fallen far short of solving the whole problem. One reason is that a "conscientious objector" or member of the "Unofficial Committee of Safety," or whatever the group may be dubbed, tends to become captious—the danger of all critics. If there are two ways of doing the thing, or two modes of expressing the same intent, he may set up his preference against that of the committee, although the difference is really unimportant. He is tempted to refuse to give the committee that has reported the bill the benefit of the doubt. In any case, he sets up his own judgment against that of the committee with its fifteen or twenty-one members, or whatever the number may be. It is true that sometimes committees do careless work, and that the best of them may reach unwise conclusions. But on the other hand it is true that objectors on the floor have not had the benefit of committee hearings and deliberations. To give to as few as three of them what is in practical effect the power to kill the minor bills seems to many of us unfair and unnecessary. Naturally, the objectors sympathize with each other, and if one objects, two others are likely to back him up for the sake of the morale of the group. Many of us think that it would be safe and

wise to require five objectors when a bill is reached the second time. The Republican conference last December decided to that effect, and there was approval on the Democratic side. But the Democrats in caucus concluded not to go at the time much beyond changing the discharge rule, and the Committee on Rules did not later act in the matter. Sooner or later, however, the change will in all probability be made.

The Consent Calendar was designed to dispose quickly of the minor public bills, and two days in the month were definitely allotted to it. This allotment is so valued by the members that it is religiously observed, the floor leader of the majority almost never asking that it be supplanted by other business. On the face of it, the rules seem to be more liberal with the Private Calendar, for they say that on Friday of each week, after the disposal of such business on the Speaker's table as requires reference only, it shall be in order to entertain a motion to consider business on the Private Calendar. The trouble is that this puts it within the power of the Speaker to decide whether the Private Calendar shall be taken up or not. Of late, the pressure of what is thought more important business has become so great that the Speaker rarely if ever gives preference to the private bills, and their only chance is found in two or three night sessions held for the particular purpose of taking up the Private Calendar.

The situation is most unsatisfactory, as the figures of performance show. One remedy is proposed by Representative John Q. Tilson, one of the oldest members of the House in point of service and for some years its Republican floor leader, a man thoroughly versed in parliamentary law and familiar with parliamentary procedure since the days when he was speaker of the Connecticut House. The fact that he is wisely conservative by nature gives all the more weight to any recommendation for change that he may make.

"My suggestion," says Mr. Tilson,¹ "is that a special committee of a dozen members, six from each side of the middle aisle, be appointed as a sifting board to sit when the House is not in session, under rules requiring that if not more than two members of the board, one from either side of the political fence, object, the bill shall be reported back to the House on a preferred list for passage. This committee, or board, should be selected from those members who habitually give time and consideration to private bills, and should be changed from time to time in case any of the members selected fail to give the necessary time and attention. In this

¹ *Congressional Record*, Appendix, July 25, 1932.

way, the House would have the benefit of the same careful study and attention now given to private bills by a few individual members and at sessions of the House devoted to the Private Calendar would be able to dispose of a very much larger number of bills than is now the case. Such a plan would also give more time for the consideration of contested private bills, perhaps, under some such rule as that which has proved unworkable in the present session as applied to the entire Private Calendar."

Mr. Tilson's reference was to a change made late in April somewhat along the lines of a proposal adopted by the Republican conference at the opening of the session but not then approved by the Democratic caucus, and therefore, of course, since the Democrats had come to be the majority, not submitted to the House. When later the Committee on Rules took up the matter, it decided to follow the Republican suggestion that when a bill on the Private Calendar is first reached, objection shall not summarily prevent any debate whatever, but there may be ten minutes of argument, five on each side of the question. The Republicans would have made it twenty minutes in all, but that is not important. The point is that under reservation of the right to object, there has been more or less colloquy, which not infrequently has been so extended as to interfere with making rapid progress in handling the calendar, and it would be better to have definite opportunity and definite limit. To the same end, the new rule provided that if in the lack of objection the bill should be considered, debate under the five-minute rule should not exceed twenty minutes. Further, the rule made a distinct innovation by providing that a bill objected to should go on a Deferred List, which should have the first call on one day in the month, and, if reached, should have twenty minutes of debate. This was meant to give contested private bills sooner or later a genuine chance for consideration, which for many years they have not had. This new rule has not been put into operation. It was adopted by a slim House, in the absence of some members who would have fought, and perhaps blocked, it. Possibly it was their influence that led to keeping on with the old rule, nobody wishing to deny unanimous consent to that end.

Mr. Tilson's proposal brings to mind the Examiners of Private Bills in the English Parliament. Their work, however, is addressed to form rather than merit. Their status is something like that of our legislative counsel, which suggests that our handling

of petty business would be expedited, and therefore its completed volume increased, by the simple expedient of having all bills reported by committees passed upon by the legislative counsel before being placed on the calendars. This would let technical improvement be made without the time-taking process of amendment on the floor. One of the weaknesses of Congressional procedure is that it does not ensure expert bill drafting. Use of the legislative counsel is optional with committees. Furthermore, although this most excellent adjunct has now established itself firmly in the confidence of House and Senate, appropriation for its support is not yet large enough to provide staffs that can do much more than aid the major committees in the preparation of the more important bills. It would be wise economy to employ more experts, so that such ends could be served as are now found in some of the state legislatures, where lawyers skilled in this particular field perfect bills between two stages of debate. The work of Congress is too heavy to permit two stages, and polishing would have to be done in advance, with still the opportunity for technical damage by amendments offered on the floor; but this damage would be lessened to useful degree if bills came before the House or Senate without palpable defects.

To my mind, the chief objection to Mr. Tilson's proposal is its requirement that a dozen members of the House work the year round, or at any rate several weeks, possibly several months, more than the rest of the members. This would be a hardship and would endanger health. Occasional service on recess committees is endurable, but such service year in and year out would be avoided, and even refused, by most men. Would it not seem better to turn the work over to salaried men from outside? A board made up, let us say, of former members would have the legislative point of view and would exercise judgment which the House would be likely to accept. Mr. Tilson does not contemplate final decision anyhow. What he is after is that somebody shall make preliminary study. Such study is most desirable if remedy is to be looked for in that direction.

There is, however, another direction that should be considered. Bear in mind that these private bills intend justice, equity, mercy, or generosity, and to these advantage might be added. Assuming that by justice we mean such decision as is made by courts of law, there is no logical reason whatever why it should not be turned

over to courts of law. Extending the powers of the Court of Claims from contract to tort is the evident remedy. To this should be added power for the departments and bureaus to settle more minor claims. In my own judgment, matters calling for what the lawyers mean by "equity" could also be safely entrusted to the Court of Claims. The question whether departments and bureaus ought also to have unrestricted power to administer equity is not so clear. Probably that ought to be put in the same class with matters of mercy or generosity. Here the resort might well be to a method of parliamentary procedure that in the course of the last half-century and more has steadily grown in favor with the House of Commons and has quietly established itself as a useful and satisfactory way of handling various kinds of minor business. It is the system of provisional orders, under which administrative law-making is entrusted to the administrative agencies of government, subject to control by Parliament. According to importance, roughly speaking, the minor laws so treated are of three classes—those that have effect until Parliament disapproves, those that have effect if Parliament does not disapprove within a specified time, and those that have effect when Parliament approves. Applied to our private bills, the second of these should be our resort. The first could not be applied to claims, and the third would needlessly lessen the saving of the time of Congress that is so much to be desired.

The same device ought to be extended—in my judgment, must sooner or later be extended—to many minor bills not classed as private. For instance, it ought at once to be applied to all legislation for the District of Columbia. At present, from a dozen to a score of the working days of each Congress are given to matters that in every city in the land save Washington are handled by a city council. This work ought to be done there by the District commissioners, or possibly a newly created council, subject perhaps to disapproval by Congress of important specified classes of ordinances and expenditures. Again, departments and bureaus might well be permitted to make changes in the details of administrative laws, likewise subject to disapproval by Congress within a definite time. Here the ultra-conservative would doubtless demand that the changes should not take effect until specifically approved by Congress, though it seems to me safe not to go beyond giving Congress opportunity to disapprove.

One who has not served in a legislative body may well fail to appreciate the significance of shifting initiative by use of the provisional order system. It lies partly in the indefinite and harmful delay of much legislation that is justifiable and desirable. As things go now, the deficiencies of Congress are to be found not so much in the petty things, deplorably as they are treated, nor in the big things, as in those midway, particularly if they can be postponed. With ever-changing social and economic conditions, there is constant need for change in administrative law. The machinery of government is always calling for readjustment. But this is the hardest thing to get Congress to undertake; for it can be postponed.

However, it is the petty things that here concern us. Returning to them, let me call attention to the fact that of the 634 bills on the Private Calendar not acted upon by the House when Congress adjourned its first and long session last July, 187 had been reported by committees other than those on claims and war claims. Although most of these involved expenditure, some, such as those conferring honors or relating to public lands, were matters that might just as well have been left to the departments or bureaus concerned. In the case of almost all of these, the committee concerned seeks and follows the judgment of the department or bureau anyhow, and they do not seem to be matters that should invade the time of so large and costly a body as Congress.

This is in much larger volume true of bills on the Consent Calendar, placed there by reason of the somewhat arbitrary, finical, and uncertain line drawn between private and public law. As a matter of fact, these bills do not look to genuine law at all. They look rather to exceptions to law, that is, exceptions to the general rule. For instance, it is the general rule that bridges shall not be built over navigable waters. Anybody who proposes to build such a bridge must come to Congress for permission. Rarely does Congress fail to accept the judgment of the War Department engineers—so rarely that it seems needless to take the time for separate reading and handling of every one of these bridge bills, now become numerous by reason of so much highway construction. We have been told that the Committee on Interstate and Foreign Commerce, which reports them, has had in mind a general law on the subject which would save

this lost motion. The delay in framing such a measure is understood to have been due to the difficulty of framing a law that will meet many diverse situations. If this should prove an insurmountable obstacle, I can see no reason why bridge bills should not be combined in two or three omnibus bills, as pensions are now treated, but with more opportunity for amendment than in practice is now given to pension bills.

With some revision of the rules, more of the petty business of the House could be disposed of on Calendar Wednesday than is now the case. Calendar Wednesday was one of the reforms secured a score and more of years ago by the insurrection against what was called "Cannonism," which was the name given to what was thought excessive control of the business of the House by a very few men, most powerful of them being the Speaker, then Mr. Cannon. One day a week was to be set aside for committees in turn to use their own judgment as to what the House should consider. Without discussing the merits of the principle involved, it may be pointed out that because of the hour-rule fewer bills are thus disposed of than might easily be made the case. On Calendar Wednesday, there may be but two hours of debate on any one bill. One hour is controlled by the chairman of the committee concerned, one hour by an opponent. The House has the bad habit of thinking that "one hour" means in application the whole hour. Each of the two men controlling the time will dole out to other members such of the sixty minutes as he does not himself use, with no regard whatever to whether the bill deserves two hours or not. Usually, therefore, only two or three bills will be disposed of in an afternoon. It is to be wished that the majority and minority floor leaders would move the previous question on the minor bills, or that the chair, whether it be the Speaker or the chairman of a committee of the whole, would send word to some member on the floor to move it, as is the practice in the Massachusetts House when the Speaker thinks there has been debate enough.

The rules of the national House could be usefully revised so that much of its business could be expedited without unfairly impairing the rights of the minority. Rules should protect the minority and at the same time let the majority have its way with reasonable expedition. Such revision is what the House today most needs.

THE JAPANESE EMPEROR, II*

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IV. EXECUTIVE POWERS OF THE EMPEROR

The executive powers of the Emperor include: (1) appointments and general administration, (2) pardons, (3) organization of the army and navy, (4) declaration of war, (5) conclusion of peace and treaty-making, and (6) establishment of martial law.

Article X of the constitution defines the appointing power of the Emperor. His competence is not confined to mere selection of officials, since the constitution provides that "the Emperor determines the organization of the different branches of the administration, and the salaries of all civil and military officers, and appoints and dismisses the same." Clearly, the appointing power of the Emperor is unlimited. There is no necessity for securing the consent of any confirming body. The Emperor is thus unhampered by the restrictions that bind the president of the United States. This prerogative also extends to the power of dismissal—a potent instrument for the promotion of executive efficiency as well as autocracy. Accordingly, the civil service in Japan is regulated by imperial ordinance rather than by statute.³⁶

Like the executive under most constitutions, the Emperor possesses the pardoning power. Article XVI provides that he may order "amnesty, pardon, commutation of punishments, and rehabilitation."

Under Article XI, the Emperor has supreme command of the army and navy, and under Article XII he "determines the organization and peace standing of the army and navy." The exalted position of the Emperor as commander-in-chief of the army

* For Part I of this article, see this REVIEW, August, 1932.

³⁶ Compare Tatsukichi Minobe, *Gyoseiho Satsuyo*, or Principles of Administrative Law (Tokyo, 1927), Vol. I, p. 214; Man Oda, *Gyoseiho Kogi*, or Lectures on Administrative Law (Tokyo, 1917), Vol. I, p. 348. For the text of the Kakusho Kansei Tsusoku, or Ordinance Concerning the Organization of the Departments, and of the Bunkan Ninyo Rei, or Ordinance Concerning the Appointment of Civil Officials, see *Genko Horei Shuran* (Tokyo, 1927), Vol. I, bk. iii, pp. 13, 349. Translations by Dr. Takeuchi appear in L. D. White, *Civil Service in the Modern State* (Chicago, 1930), pp. 528-534.

and navy will be discussed presently, but attention should here be drawn to the fact that the Emperor's power to determine the peace standing of the army and navy means, as Prince Ito has declared, "the fixing of the number of men to be recruited each year."³⁷ Obviously, under any modern government, this is enormous authority, particularly in a state in which conscription compels all able-bodied men to receive military training. Article XX provides that "Japanese subjects are amenable to service in the army or navy, according to the provisions of law." But the language does not mean that conscription is to be regulated by statute rather than by imperial ordinance.³⁸ As a matter of fact, until a few years ago, compulsory military training was administered under an ordinance promulgated prior to the adoption of the constitution.³⁹ Of course, there is a budgetary limitation upon all military expenditures. The Diet may exercise some degree of control by refusal to vote as large sums as the ministers of the Emperor demand for military supplies. Several cabinet crises involving this very point have occurred. But, as will be explained later, the military clique has an advantage over the Diet in being able to paralyze ministerial government through the disruption of the cabinet.

The Emperor enjoys the exclusive power to declare war, conclude peace, and make treaties (Article XIII): As Prince Ito succinctly declared: "The principal object of the present article is to state that the Emperor shall dispose of all matters relating to foreign intercourse, with the advice of his ministers, but allowing no interference by the Diet therein."⁴⁰ In other words, the Emperor has full authority to lead his people into an offensive or defensive war without consent of the Diet. Likewise, the treaty-making power is exclusively in his hands. As in all other

³⁷ *Commentaries*, p. 26.

³⁸ In this connection it may be noted that some jurists hold that while a statute vesting in another governmental agency the Emperor's power as commander-in-chief would be unconstitutional, a statute for the exercise of the military power would be constitutional. Ichimura, *Teikoku Kempo Ken*, or *Commentaries upon the Imperial Constitution* (Tokyo, 1926), p. 749.

³⁹ Compare Cho Shimizu, *Kempo Hen* (21st ed., 1923), p. 515. An English translation of the Chohei Kisoku, or Military Service Ordinance, of 1871 appears in W. W. McLaren, *Japanese Government Documents* (Transactions of the Asiatic Society of Japan, Tokyo, 1914), Vol. XLII, pt. 1, p. 17.

⁴⁰ *Commentaries*, p. 28.

public affairs, the Emperor acts only through his ministers, the negotiation of treaties being entrusted to the care of the ministry of foreign affairs. The Emperor has accepted a qualified limitation on the treaty-making power by the practice of referring all treaties to the consideration of the privy council. The constitutional basis for this procedure is not Article LVI, setting up the privy council, but an imperial ordinance of April 28, 1888 (commonly cited as the *Sumitswin Kansei*) and its amendments, providing that the privy council should advise, when requested, on the ratification of treaties.⁴¹ The Emperor thus submits the treaties negotiated by his ministers to a unique organ of the government. The Throne is under no obligation to accept the advice of the privy council. But the history of treaty-making in Japan during the last forty years shows no instance wherein the Emperor has rejected the recommendation of the council. Cabinets, consequently, labor under fear of having their diplomatic arrangements reversed by the privy council.⁴²

The Emperor also has the extensive power of declaring martial law, although under Article XIV "the conditions and effects of a state of siege shall be determined by law." But certainly the qualification attached to the declaration of martial law can have little practical effect, inasmuch as during a period of martial law an imperial ordinance may set aside any action of the Diet. At least, this seems to be the view of every Japanese jurist.⁴³

V. THE EMPEROR AS COMMANDER-IN-CHIEF OF THE ARMY AND NAVY

One of the significant characteristics of the Japanese constitution is the authority given the Emperor as commander-in-

⁴¹ This ordinance, cited as Imperial Ordinance No. 22 of 1888, and its amendments, is found in *Genko Horei Shuran* (Tokyo, 1927), Vol. I, bk. iii, p. 5. An English translation was published in the *Japan Weekly Mail*, May 12, 1888, pp. 444-445, and is reprinted in W. W. McLaren, *Japanese Government Documents* (Transactions of the Asiatic Society of Japan, Tokyo, 1914), Vol. XLII, pt. 1, pp. 127-132.

⁴² On this subject, see articles by the author on "The Treaty-Making Power in Japan," in *American Journal of International Law* (April, 1931), Vol. XXV, pp. 270-297, and "The Japanese Privy Council," in this REVIEW (August, November, 1931), Vol. XXV, pp. 589-614, 881-905.

⁴³ Yatsuka Hozumi, *Kempo Teiyo* (1910), Vol. II, pp. 620-626; Tatsukichi Minobe, *Kempo Seigi* (1928), p. 292.

chief of the army and navy.⁴⁴ It is not unusual, even in limited monarchies, for the monarch to have the titular command of the military forces. In all representative governments, however, the civil authority has, without exception, ultimate control over the military forces of the state, and actually directs and supervises their activity. But in Japan, military and civil affairs are sharply separated. The control of the army and navy is outside the purview of the usual state organs, outside the control of the cabinet. The constitution does not expressly create this separation of authority, although in a measure it is implied in Article XII providing that "the Emperor determines the organization and peace standing of the army and navy."

Tradition and, more recently, imperial ordinances have brought about this segregation of military affairs. Its purpose is the preservation of military secrets and the maintenance of a superb fighting machine.⁴⁵ The ordinances of Prince Yamagata, issued in 1899, have had an important part in strengthening the independent position of the military authority.⁴⁶ These provide that the portfolios of war and the navy can be held only by generals and lieutenant-generals or admirals and vice-admirals. The aim of the distinguished author of these ordinances was to keep the army and navy under the control of the Choshu and Satsuma clans and to prevent any parliamentary interference with the military establishment.⁴⁷ Today, the Choshu clan no longer is able to dominate the army, nor the Satsuma the navy, although they are still powerful in the military establishment. The ordinances of Yamagata, however, give the military machine a powerful weapon against the government and allow it to maintain an independence unsurpassed in the history of modern governments. Through them, the prime minister is limited in his choice of cabinet members; for no civilian may head the war or navy offices. The premier is compelled to select men for these positions who are more or less under the control of the high

"Article XI reads: "The Emperor has the supreme command of the army and navy."

⁴⁵ Compare Tatsukichi Minobe, *Kempo Seigi* (1928), pp. 220, 550-553.

⁴⁶ For the ordinances as amended to date, see the *Genko Horei Shuran* (1929), Vol. I, bk. iii, pp. 78, 88.

⁴⁷ Sakuzo Yoshino, *Niju Seifu to Iaku Joso*, or Dual Government and the Supreme Command (Tokyo, 1922), pp. 7-12, 43-45.

officers of the army and navy. As a result, these two services can sometimes dictate to the cabinet. In 1913, a dispute between General Uyebara and the Saionji government regarding the number of troops to be garrisoned in Korea led to the army's defiance of the government. Uyebara resigned as head of the war office, and no other army officer would take his place. Unable to find a minister of war, the Saionji cabinet was compelled to resign.⁴⁸

Another advantage possessed by the militarists arises from the constitutional theory of the individual responsibility of ministers of state. In Great Britain, ministers are responsible both individually and collectively for the whole administration. Professor Minobe attempts to assert the same doctrine in Japan.⁴⁹ But he is in the minority. Even the somewhat liberal Shimizu holds that "the minister of state is responsible to the Emperor only in an individual, not in a collective, capacity."⁵⁰ And Uyesugi expresses the traditional constitutional opinion when he says: "The premier presides over the cabinet, and it is true that unity of administration is effected through him; but a vote of the cabinet cannot bind any minister of state. There is no collective responsibility."⁵¹ Finally, the ordinance for the organization of the cabinet patently admits that in military affairs the ministers of war and the navy report directly to the Emperor, and not through the medium of the prime minister.⁵²

The military organs of government consist, on the one hand, of the ministers of war and the navy, and on the other, of the supreme war council, the general staff office, and the naval staff board. The general staff office is headed by a chief who technically is subordinate to the minister of war. Likewise, the naval staff board consists of the chief, the commanders of naval stations

⁴⁸ For contemporary accounts, see *Tokyo Asahi*, December 5 and 6, 1912, p. 1; *Osaka Mainichi*, December 10, 1912, p. 1.

⁴⁹ *Kempo Seigi* (1928), p. 301.

⁵⁰ *Kempo Hen* (21st ed., 1923), pp. 646-647.

⁵¹ *Kempo Jutsugi* (1927), pp. 647-648. Compare Yatsuka Hozumi, *Kempo Teiyo* (1910), Vol. II, pp. 556-558.

⁵² Article VI of the Ordinance Concerning the Organization of the Cabinet reads: "With the exception of military and naval affairs of grave importance which, having been reported directly to His Majesty the Emperor, may be submitted to the cabinet for consideration, the ministers of state for war and the navy shall report to the minister president of state." Imperial Ordinance no. 135 of 1889, amended by Imperial Ordinance no. 7 of 1907. *Genko Horei Shuran* (1927), Vol. I, bk. iii, p. 1.

and ports, chiefs of arsenals and commanders of the imperial fleets—all of them being subordinate to the minister of the navy. The supreme war council, however, is made up of high officials of both the army and the navy, and is in no way subordinate to the military ministers of the cabinet. Even if the Yamagata ordinances were repealed, and even if civilians headed the war and navy offices, the supreme war council would still remain as a stumbling block in the way of democratic control of military affairs.⁵³

The relationship between the Emperor and the officers in high command is another feature that impairs cabinet control of the military. The Emperor is commander-in-chief of the army and navy; accordingly, officers of high rank, including the ministers of war and the navy, the chiefs of staff, and the members of the supreme war council, have access to his person. The military chiefs thus have an equal footing with the ministers of state as governmental advisers of the Emperor. In any truly parliamentary government, the prime minister has more ready access to the person of the monarch than any military chief or any other governmental official. More than this, the monarch would seldom receive any military chief on a governmental matter without the permission of the prime minister. In Japan, parliamentary government is undeveloped. Military chiefs may even undo the work of the cabinet through an interview with the Emperor. This does not mean that the Emperor will always follow the advice of his military leaders. When, for instance, in 1930, Admiral Kanji Kato, chief of the naval staff, in a personal interview with the Emperor, urged the Throne to instruct the foreign office to repudiate the Reed-Matsudaira agreement in the London Naval Conference, the Emperor followed the advice of the prime minister, rather than that of the military chiefs.⁵⁴ The liberals hailed this event as a victory for the civil government in its struggle for control of military affairs. Only a year later, however, at the outbreak of the Sino-Japanese clash in Manchuria, the military chiefs had constant access to the Emperor, visiting him apparently more freely than did the prime

⁵³ Compare Sakuzō Yoshino, *Niju Seifu to Iaku Joso* (1922), p. 72.

⁵⁴ Concerning the appeal of Admiral Kato to the Throne, compare the *Tokyo Asahi Shimbun*, April 2, 3, 1930, p. 1; *Jiji Shimpō*, April 2, 3, 1930, p. 1; *Japan Weekly Chronicle* (Kobe), April 10, 1930, pp. 360-361.

minister.⁵⁵ At the same time, the Emperor appears to have given no rebuke to the war chiefs, who were responsible for dispatching troops to Manchuria without the cabinet's consent, and the cabinet appears to have been ignored in the appointment of Prince Kanin as chief of the army general staff.⁵⁶

Much depends upon the character of the officials of the Imperial Household who are the immediate advisors of the Emperor. At the present time, this group includes Dr. Kitokuro Ichiki (the minister of the Imperial Household), Count Nobuaki Makino (lord keeper of the privy seal), and Admiral Kantiro Suzuki (the grand chamberlain). Only through these officials can an audience with the Emperor be obtained. It is evident that if these men have liberal tendencies, they will tend to exclude the military chiefs. On the other hand, if they are conservative, they will give the militarists easy access to the Emperor. As long as the war chiefs have this contact with the Emperor, they may be expected to exhibit the spirit of arrogance which has proved insufferable to the anti-militarists.

We have alluded to the flaunting of the cabinet on the occasion when troops were dispatched to Manchuria. On September 21, 1931, after the explosion on the South Manchurian railway at Peitaying, the Minseito cabinet devoted seven hours to debating the question of sending reënforcements. General Minami, the minister of war, demanded urgent action; while Baron Shidehara, the minister of foreign affairs, and Dr. Inouye, the finance minister (later assassinated), vehemently opposed such a step. The cabinet adjourned after agreeing to settle the question on the following day.⁵⁷ But before the cabinet reassembled, the Japanese commandant at Seoul forwarded a brigade of 4,100 troops to Manchuria. The cabinet faced a *fait accompli*. The minister of war adroitly informed the cabinet that the Korean commander, in a great emergency, had sent forward reënforcements. But it was evident that telegraphic communication be-

⁵⁵ Compare *Tokyo Asahi*, September 19, 1931, p. 1; *Osaka Mainichi*, September 20, 1931, p. 1; *Japan Weekly Chronicle* (Kobe), September 24, 1931, p. 376.

⁵⁶ Compare *Tokyo Asahi*, December 29, 1931, p. 1; *Japan Weekly Chronicle* (Kobe), December 31, 1931, p. 841.

⁵⁷ *Tokyo Asahi*, September 22, 1931, p. 1. Compare dispatch in the *New York Times*, September 22, 1931, p. 5; *Japan Weekly Chronicle* (Kobe), October 1, 1931, pp. 405-406.

tween Seoul and Tokyo was still intact, and that the Korean commandant, unless he shrewdly discerned the wishes of his superiors, must have communicated with the war office. No attempt was made to reprimand or punish the hasty Korean commandant, and the cabinet submitted to the successful maneuver of the war lords.

Abundant evidence reveals the inability of the cabinet during the same crisis to speak for the army and navy. On September 30, 1931, Yoshizawa, the Japanese representative in the Council of the League of Nations, accepted, apparently with the consent of his government, the resolution of the Council calling for the withdrawal of Japanese troops within the railway zone. The subsequent disregard of this agreement by Japan upon the excuse of chasing "bandits" in Manchuria placed the foreign office in the embarrassing dilemma of either appearing to disregard solemn agreements or being unable to account for the army. Likewise, the attack of the foreign office on the American secretary of state, on November 27, 1931, after his disclosure of the existence of the Japanese promise to refrain from a movement toward Chinchow was apparently due to resentment caused by the exposure of the inability of the foreign office to make promises which the army would honor.⁵⁸

In conclusion, it may be said that the separation of the military establishment from civil control not only places enormous power in the hands of the Emperor, but also enhances the control of the military clique in case the Emperor gives ear to the war lords rather than the political chiefs.

VI. THE IMPERIAL HOUSEHOLD

To the Emperor belongs authority over the Imperial Household and over dynastic questions. Before the establishment of the constitution in 1889, there was no distinction between the affairs of state and those of the Imperial Household.⁵⁹ Both were under the supervision of the Genro-in or the Council of State, the

⁵⁸ For the statements by the foreign office, see *Tokyo Asahi*, November 28, 1931, p. 1; *Jiji Shimpo*, November 28, 1931, p. 4; *Japan Weekly Chronicle* (Kobe), December 3, 1931, pp. 718-719.

⁵⁹ Yatsuka Hozumi, *Kempo Teiyo* (1910), Vol. I, p. 283; Minobe, *Kempo Oyobi Kempo-shi Kenkyu* (1908), p. 65.

predecessor of the present cabinet. There was no distinction between public property and the private property of the imperial family. Shortly before the establishment of the constitution, the property of the Throne and of the state was separated, and the minister of the Imperial Household created.⁶⁰ The process was completed by the Imperial House Law of 1889, an imperial ordinance promulgated the same day that the constitution was established.⁶¹

The Imperial House Law regulates not only matters concerning the dynasty, but also many items which in a representative government are under the rule of the parliament. In Great Britain, for instance, Parliament has control over the succession to the crown, as witness the British Act of Settlement of 1701, and over regency, as witness the Regency Bill of 1911. But in Japan, ascension to the throne and the regency are governed by the Imperial House Law, which, according to the constitution, is beyond the control of the legislature; for Article LXXIV provides that "no modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet."

This ordinance provides for the accession to the Imperial Throne, stipulating that succession shall be through the eldest son or eldest grandson or collateral heirs in case of lack of male issue.⁶² Rules governing the choice of an Emperor among the collateral issue are laid down. The provisions aim to meet every eventuality of dynastic history or tragedy. The statesmen of the Restoration period were men who did not blink realities. Thus, in spite of the divinity with which they invested the Emperor, they provided for cases of insanity or other disability. Article IX provides that "when the imperial heir is suffering from an incurable disease of mind or body, or when any other weighty cause exists, the order of succession may be changed in accord-

⁶⁰ For a translation of this imperial decree, under date of December 2 and 28, 1880, see *Japan Weekly Mail*, January 10, 1881, p. 1115. This document is reprinted in McLaren's *Japanese Government Documents*, pp. 67-68.

⁶¹ The text of this ordinance—the *Koshitsu-rei*—may be found in the *Genko Horei Shuran* (1927), Vol. I, bk. i, pp. 15-19. An English translation of the Imperial House Law is to be found in the appendix to Count Hirobumi Ito's *Commentaries*, pp. 155-171.

⁶² Commenting on imperial succession, Yatsuka Hozumi said: "The Japanese state is based upon the family system, and the imperial succession is to be interpreted in the light of the dynastic history." *Kempo Teiyo* (1910), Vol. I, p. 229.

ance with the foregoing provision with the advice of the Imperial Family Council, and with that of the privy council." Articles XIX-XXV provide for the regency in case the Emperor is a minor or for other good reasons. In case of incapacity of the Emperor, the *Kotaishi* (the son and heir-apparent of the Emperor) may assume the regency. From November, 1921, to December, 1926, during the mild insanity of the Emperor Taisho, the regency was held by the present Emperor, Hirohito. In lieu of the *Kotaishi*, the regency descends in the following order: (1) the *Kotaison*, or grandson of the Emperor, (2) an imperial prince, (3) the Empress, (4) the Empress-Dowager, (5) the Grand Empress-Dowager, (6) an imperial princess.

The law also provides for the Imperial Family Council, composed of the male members of the imperial family who have reached their majority. The lord keeper of the privy seal, the president of the privy council, the minister of the Imperial Household, the minister of state for justice, and the president of the court of cassation take part in the council's deliberations.

A few words should be added with reference to the civil list and the imperial properties. How do they compare with those of the British crown? The royal family of Great Britain enjoys a civil list fixed after the commencement of each reign, and amounting at present to £470,000. At the same time, the king has the revenues of the ancient duchy of Cornwall, amounting to about £66,000 a year. He also has a large private fortune. The possessions of the Japanese royal family are even more extensive, although in no way reaching the vast domain of the Romanoff czars. In 1927, the royal domain consisted of 1,397,656 cho, or about 3,800,000 acres, of landed property, including tenements, agricultural lands, and forests. This was valued at 637,234,000 yen. The Throne owned buildings, furniture, cattle, and farm implements to the value of nearly 83,000,000 yen, making a total of 720,000,000 yen. Besides this landed and tangible property, the imperial family holds a considerable block of the shares of the Bank of Japan, the Yokohama Specie Bank, the Formosan Bank, the Nippon-Yusen Kaisha, and the Imperial Hotel in Tokyo, amounting in value to about 300,000,000 yen. In view of the necessity for the extension of agriculture in Japan, the imperial family, more than a decade ago, decided to sell or otherwise

turn over to private or public ownership a considerable part of the imperial estates. Accordingly, in August, 1921, 118,065 cho of agricultural lands were disposed of in this fashion. By 1929, 216,043 cho of the hereditary estates had been alienated. In 1930, the imperial palace at Nogoya was presented to the municipality as a museum. It is apparent that a vast extent of land still remains in the hands of the imperial house. In spite of the intense pressure in Japan for agricultural lands, the great veneration of the Emperor by the people has prevented attacks upon the royal family which monopolizes such a large hereditary estate. Nevertheless, the wise relinquishment of considerable acreage during the past ten years has averted what might have developed into a national reproach.

During the early years of the constitution, the civil list remained at 3,000,000 yen. In 1910, however, it was increased to 4,500,000.

VII. THE CONSTITUTIONAL MONARCHY

In the limited and constitutional monarchies of recent years in Europe, the monarch tends to abstain from all personal intervention in the government. His part is that of maintaining a dignified headship of the state, and, at times of ministerial crises, summoning the obvious political leader to form a cabinet. This is preëminently the rôle played by the British crown. It is the rôle of the Italian monarch, even under a dictatorship, while the attempt of Alfonso XIII of Spain to assume a larger sphere was followed by the republican revolution. In form, the Japanese Throne comports with the European standard. The practice had its antecedents in the former relation of the shogun and the Emperor in the Tokugawa era. Moreover, the so-called restoration of 1867 was directed by a group of able statesmen who respectfully led rather than followed their monarch.

It should be remembered that Emperor Meiji never personally directed the affairs of state. His every act was the act of a minister, who, of course, took the responsibility. We have little information as to how far he modified the advice of his ministers. We have, however, intrinsic evidence that most decisions were initiated by the ministers themselves. For instance, the dismissal of Okuma from the privy council by the Emperor in November,

1891, because of his negotiations with political parties, was on the recommendation of Premier Matsukata.⁶³ On various occasions, the Emperor acted to resolve a deadlock in the Diet, as in the years 1893 and 1901. In the latter instance, the House of Peers had rejected certain items in the annual budget presented by the ministry, with the result that a deadlock between the two chambers had ensued. The Emperor thereupon issued the imperial rescript of March 12, 1901, in which he expressed his wish that the Peers should consent to the items so that the administration would not be hampered. Immediately, the Peers assented and passed the bill. Evidence is not lacking that on this occasion the initiation of the rescript did not come from the Emperor, for a letter from Prince Ito to Prince Konoye, president of the House of Peers, discloses the fact that the premier himself requested the Emperor for the rescript.⁶⁴

Every examination of imperial acts for which the records are available has shown that in the affairs of state the Emperor has acted only upon the advice of high officials. Not always has the solicited counsel come from ministers of state. Of the various sources of advice we shall speak later. But here we must remark that the doctrine of ministerial responsibility attaches to the advice of ministers alone. Article LV of the constitution provides: "The respective ministers of state shall give their advice to the Emperor, and be responsible for it. All laws, imperial ordinances, and imperial rescripts of whatever kind that relate to the affairs of the state require the counter-signature of a minister of state." In his *Commentaries*, Prince Ito devoted considerable attention to ministerial responsibility. A doctrine of responsibility is fully admitted, but not the same doctrine as found in Europe. Responsibility to whom? Certainly not to the Diet. For Prince Ito says:

Thus, in our constitution the following conclusions have been arrived at: first, that the ministers of state are charged with the duty of giving advice to the Emperor, which is their proper function, and that they are not held responsible on his behalf; secondly, that ministers are directly responsible to the Emperor and indirectly so to the people; thirdly, that it is the Sovereign and not the people that can decide as to the respon-

⁶³ Takeshigi Kudo, *Teikoku Gikaishi*, or Parliamentary History of Japan (Tokyo, 1901-06), Vol. I, p. 97.

⁶⁴ *Ibid.*, Vol. II, p. 329.

sibility of ministers, because the Sovereign possesses the rights of sovereignty of the state; fourthly, that the responsibility of ministers is a political one and has no relation to criminal or civil responsibility, nor can it conflict therewith, neither can the one affect the other.⁶⁵

Here again practice does not always comport with theory. As party government has developed in Japan, the majority in the Diet, particularly in the lower house, has attempted to hold the cabinet accountable. The old school of jurists ignores this growing tendency. Says Hozumi: "Under the Japanese system as contrasted with the British parliamentary practice, the minister is responsible alone to the Emperor for his official acts. The Emperor has the exclusive power of appointment and dismissal, and any conflict between the government and the Diet does not alter the case. . . . The British system of ministerial responsibility is not in conformity with the spirit of the Japanese constitution. The Japanese minister is not responsible to the Diet and need not enjoy the confidence of the legislature."⁶⁶ In opposition to the old school of jurists, Minobe calls attention to the growing practice of the legislature to hold the cabinet to a strict accountability.⁶⁷ Thus, practice and legal theory do not correspond.

Now the Emperor's advisers—constitutional and extra-constitutional—are not limited to the prime minister and the cabinet. These advisers include the privy council, the Genro or elder statesmen, the supreme war council, and finally the high officers of the Imperial Household. The privy council technically gives advice to the Emperor only when such advice is requested, and it is considered improper for individual members of the council to tender their opinions individually as members of the council.⁶⁸ Almost without exception, projects of laws and ordi-

⁶⁵ *Commentaries*, pp. 84, 93.

⁶⁶ *Kempo Teiyo* (1910), Vol. II, pp. 555, 561-562. In the words of Uyesugi: "The minister of state in the capacity of advising the Emperor is responsible for his advice and not the Emperor. . . . So far as the Diet is concerned, ministerial responsibility goes no further than the necessity of the minister to be questioned in the legislature and to submit to the amendment or rejection of his projects of law." *Kempo Jutsugi* (1927), pp. 667, 669-670. Compare Cho Shimizu, *Kempo Hen* (21st ed., 1923), pp. 724-727.

⁶⁷ *Kempo Teiyo* (1927), pp. 290-291.

⁶⁸ Article LVI, the only article in the constitution referring to the privy council, reads: "The privy councillors shall, in accordance with the provisions for the or-

nances, as well as treaties, are submitted to the deliberation of the privy council, according to the practice followed under the ordinance of 1888, and the council often amends the cabinet's projects with a ruthless hand.⁶⁹ We have no record of a law sanctioned or a treaty ratified by the Emperor against the advice of the council. Its influence upon the Emperor is far-reaching.

The Genro, or elder statesmen, found its origin in the group of trusted advisers coming down from the Restoration period, who were always consulted by the Emperor in grave matters of state, particularly on the appointment of prime ministers. During the World War, only four were still living: Prince Yamagata, Marquis Okuma, Marquis Matsukata, and Prince Saionji. Yamagata and Okuma died in 1922, and Matsukata in 1924. No successors have been named by the Emperor, and thus the ninety-two-year-old Prince Saionji is the last of this group. He has indicated his belief that the institution should expire, leaving the choice of premiers entirely to party considerations. It is likely that his death will terminate this curious institution.

It is difficult to estimate the extent of the influence of the officers of the Imperial Household. The minister of the Imperial Household, the vice-minister, the grand chamberlain, and the lord keeper of the privy seal form a select circle around the Emperor, having considerable authority in the matter of according access to the Emperor and of advising him. These officials are appointed by the government in power, although when once appointed, their tenure of office is more or less permanent. The day is not long past when the intrigues of the Household officials cried unto heaven. In 1912, Prince Katsura was helped into the offices of the lord keeper of the privy seal and grand chamberlain by Prince Yamagata, who desired that the darling of the bureaucracy and the Choshu and Satsuma militarists should be close to the young Emperor Taisho in the first years of

ganization of the privy council, deliberate upon important matters of state, when they have been consulted by the Emperor." In commenting on this article, Prince Ito said: "In performing their Heaven-received mission, sovereigns must first take advice before they arrive at a decision. Hence the establishment of the privy council is just as necessary as that of the cabinet, to serve as the highest body of the Emperor's constitutional advisers." *Commentaries*, p. 98.

⁶⁹ Compare the author's article, "The Japanese Privy Council," in this REVIEW, August, 1931.

his reign.⁷⁰ In the period following the World War, there has been a tendency to place in these responsible positions learned and somewhat liberal officials. Certainly these considerations dictated the appointment of Dr. Kitokuro Ichiki as minister of the Imperial Household in 1925. The appointment was made by the liberal, although transcendental, cabinet of Admiral Kato. This alert and scholarly official has exercised very considerable influence upon the young Emperor Hirohito. Of greater influence, perhaps, is Count Nobuaki Makino, former private secretary to Prince Ito, who has had a distinguished career as prefect, governor, cabinet minister, and diplomat. Although eighty-one years of age, he remains a liberal.⁷¹ Admiral Suzuki, the present grand chamberlain, a recent appointee, belongs to the old school and is a foil for his more liberal colleagues. Thus, two of the three officials who are closest to the Emperor are civilians, and for some years have been mildly opposed to militarism. Those who desire admittance to the Emperor's presence must break through this circle of his household officials. It is said that in the summer of 1931, when the household officials were not ready to give access to the military chiefs, a plot was contemplated among the younger militarists to assassinate Count Makino.

VIII. THE JUDICIAL POWER

The judicial power in Japan is technically in the hands of the Emperor. Article LVII of the constitution reads: "The judicature shall be exercised by the courts of law according to law, in the name of the Emperor. The organization of the courts

⁷⁰ *Tokyo Asahi*, August 14, 15, 16, 1912, p. 3; *Nippon* (Tokyo), August 16, 1912, p. 1. Compare *Japan Weekly Chronicle*, August 22, 1912, pp. 328-330. See also an article, "Mixture of Court and Politics," making the allegation that Count Makino promoted the Satsuma clansmen and intrigued to secure the selection of Count Yamamoto as premier. *Chuo Shimbun*, quoted in *Japan Advertiser*, January 15, 1924, p. 3.

⁷¹ Dr. Ichiki, who received part of his education in Germany (1890-93), became in 1894 professor of administrative law at the Imperial University of Tokyo. In 1900, he was appointed a member of the House of Peers. He served as vice-minister of home affairs in 1908-11, and as chief of the bureau of legislation in 1912-13. He was minister of education, and later minister of home affairs in the cabinet of Terauchi (1916-18). In 1917-25 he served as privy councillor. Count Makino was minister of foreign affairs in 1913-14 and represented Japan at the Paris Peace Conference after the World War. He served as minister of the Imperial Household from 1921 to 1925, and as lord keeper of the privy seal since the latter date.

of law shall be determined by law." This is in line with the theory in most constitutional monarchies which considers the crown as the source of justice. As Prince Ito explained in his *Commentaries*, "The sovereign is the fountain of justice, and his judicial authority is nothing more than a form of the manifestation of the sovereign power."⁷² Judgments are pronounced in the name of the Emperor. While the organization of the courts is in the hands of the legislature, the Emperor has unlimited power in the appointment of judges. Thus, between the Emperor and the legislature, there is little independence of the judiciary.⁷³ In this respect, Japan is similar to France and most civil law countries.

IX. AMENDMENT AND DEVELOPMENT OF THE CONSTITUTION

The constitution was the gift of the Emperor Meiji to his people, in the same way that the Prussian constitution of 1850 was the gift of King Frederick William IV to his subjects. The constitution having been granted, the hands of the monarch are tied, for its revocation is not only a step backward, but also unconstitutional. There is also an amending process. Article LXXIII reads: "When it has become necessary in future to amend the provisions of the present constitution, a project to that effect shall be submitted to the Imperial Diet by imperial order. In the above case, neither house can open the debate unless not less than two-thirds of the whole number of members are present, and no amendment can be passed, unless a majority of not less than two-thirds of the members present is obtained." In other words, the initiation of amendments to the constitution can be effected only through the Emperor. The Diet is powerless to propose drafts of fundamental law.⁷⁴ On the other hand, the Emperor cannot amend the constitution except with the consent of two-thirds of the members of both houses. Another limitation on the parliament is found in Article LXXIV, which provides that "no modification of the Imperial House Law shall be re-

⁷² *Commentaries*, p. 101.

⁷³ Yatsuka Hozumi, *Kempo Teiyo* (1910), Vol. I, pp. 107-109; Tatsukichi Minobe, *Kempo Teiyo* (1927), pp. 301-307.

⁷⁴ "The Diet has no power to offer any modification to the proposed amendment; it can only vote 'yes' or 'no.'" Cho Shimizu, *Kempo Hen* (21st ed., 1923), p. 201.

quired to be submitted to the deliberation of the Imperial Diet," and by Article LXXV, which prohibits amendments during a regency.

In the forty-two years since the promulgation of the constitution, no amendment has ever been proposed by the Emperor. This does not mean that constitutional development has been greatly retarded. Like the constitution of the United States, the supreme law of Japan is worded in very general terms, permitting a wide latitude of interpretation and allowing expansion by legislative acts and administrative ordinances. For instance, the constitution does not define the electorate of the House of Representatives. But by successive legislative statutes, in 1890, 1900, 1920, and 1925, the suffrage has been extended from half a million persons at the outset to substantially all males twenty-five years of age or over, with thirteen million now possessing the right to vote. And thus without changing a word in the constitution the representative basis of the government has been revolutionized. Again, governmental changes can be effected by ordinance as well as by law. For instance, the Yamagata ordinances, placing the war and navy offices outside the control of the cabinet, are imperial ordinances which can be repealed or amended at any time by the Emperor, although in practice the approval of the privy council would be required.

Thus it is entirely possible to have a liberal development in Japan without formal amendments to the constitution. Much depends, of course, upon the enlightenment of the Emperor, and perhaps even more upon the sagacity and liberalism of the group of men who form the small circle around the Throne. In any case, the initiation of new developments must generally come from the cabinet, for it carries the burden of administration and the parliamentary direction of legislation. Day to day modification of the constitution simply by statutes and precedents—the admirable feature of the British constitution—lends a flexibility that marks one advantage of unwritten constitutions. A liberal, Dr. George Uyehara, laments the fact that the Emperor is not sole possessor of amending power. "If he were, the process of amending the constitution would be more direct and simple, though less democratic, and perhaps easier in prac-

tice than is actually the case."⁷⁵ Formal amendment is a formidable process. The cabinet must prepare a draft of the proposed amendment, and the privy council must accept it. The draft must then be discussed in both houses of the Diet, two-thirds of the members being present. Finally, a two-thirds vote is required for adoption. Even so, the process is less complicated than that required under the American constitution. But, in any case, in Japan as in America, great constitutional changes are possible without formal amendment.

In conclusion, it may not be an exaggeration to say that the Emperor is the cornerstone of the Japanese polity. This is due not only to the enormous powers which are vested in his person under the constitution, but also, and perhaps more trenchantly, to the traditions of the office and the psychology of the Japanese people, who offer a deep and abiding loyalty to the Emperor. Thus, while the Emperor plays a moderate and constitutional rôle, his great office is the instrument, through appeals to the Throne, whereby conflicting political forces secure adjustment without violent means. The British monarch is a symbol of unity in the British Empire. The Japanese Emperor is not only a symbol. The Throne is the very essence of national unity, patriotism, justice, and constitutional progress.

⁷⁵ George Etsujiro Uyehara, *The Political Development of Japan* (London, 1910), p. 135.

AMERICAN GOVERNMENT AND POLITICS

First Session of the Seventy-second Congress, December 7, 1931, to July 16, 1932.¹ While hundreds of "hunger-marchers" milled about outside, the first session of the Seventy-second Congress convened on the first Monday of last December. The mob outside lent a tone that was recurrent in a Congress given over to the consideration of national need and budget-balancing. Often lacking either in leadership or in the will to follow, Congress went its muddled way working against great odds and confronted with tasks of great complexity. The delicacy of the party balance as much as the spur of emergency pointed to the desirability of forgetting partisanship in the presence of national distress. Whether this pious attitude rendered less frequent actions dictated by political expediency remains open to question. In fact, special interests were particularly clamorous during this session. The hunger-marchers of the first day were succeeded in time by bands of those who were not content to beg for bread alone. The veterans were only one of the groups that brought back their portion asking for butter on the other side. Some measure of relief had to be provided; yet economies had to be effected and the tax burden had to be increased. A deficit of over two billion dollars had to be met in some fashion. It was this combination of economic problems with political demands that made the session a particularly interesting one. With the executive and a branch of the legislature of different political faiths, with House and Senate in party disagreement, and with a lack of unity within the parties themselves, the agencies designed to meet a perplexing national emergency threatened further to complicate the situation.

Organization. The party alignment in the two houses was balanced extraordinarily evenly. Never had Republicans and Democrats been so nicely divided in the House of Representatives, although the situation in the Senate was not without recent precedent.² To find the party control of both chambers dependent simultaneously upon so narrow a margin,

¹ For notes on the 71st Congress, see this REVIEW, Vol. 24, pp. 38, 913, and Vol. 25, p. 932. For notes on the 70th Congress, see Vol. 22, 650, and Vol. 23, p. 364; and on the 69th Congress, Vol. 20, p. 604, and Vol. 21, p. 297. For earlier notes, prepared by Lindsay Rogers, see Vol. 13, p. 251; 14, pp. 74, 659; 15, p. 366; 16, p. 41; 18, p. 79; 19, p. 761.

² 45th Congress: 39 Republicans: 36 Democrats: 1 Third Party
47th Congress: 37 Republicans: 37 Democrats: 2 Third Party
54th Congress: 42 Republicans: 39 Democrats: 5 Third Party
66th Congress: 48 Republicans: 47 Democrats: 1 Third Party
70th Congress: 47 Republicans: 47 Democrats: 1 Third Party
(1 vacancy)

however, was literally without parallel in the history of the two parties. From the very beginning, insurgent groups in the House and Senate asserted themselves. On December 4, nineteen of the Progressives in the

PARTY ORGANIZATION IN THE SEVENTY-SECOND CONGRESS, FIRST SESSION

(Individuals indicated with asterisk held similar positions in 71st Congress)

SENATE

Republican

(Preliminary caucus December 4, 1931)
 *Moses, G. H. (N.H.) Pres. Pro. tem.; Chairman of Rules Committee
 *Watson, J. E. (Ind.) Floor Leader
 McNary, C. L. (Ore.) Assistant Leader
 *Fess, S. D. (Ohio) Whip

Steering Committee

(Committee on Order of Business of Republican Conference)
 Vandenberg, A. H. (Mich.) Chairman
 Hastings, D. O. (Del.)
 Frazier, L. J. (N.D.)
 Kean, H. F. (N.J.)
 Steiwer, F. (Ore.)

Committee on Committees

*McNary, C. L. (Ore.)
 *Moses, G. H. (N.H.)
 *Smoot, R. (Utah)
 *Reed, D. A. (Pa.)
 *Oddie, T. L. (Nev.)
 *Nye, G. P. (N.D.)
 *Bingham, H. (Conn.)
 *Capper, A. (Kan.)
 Hastings, D. O. (Del.)

Democratic

(Preliminary caucus December 4, 1931)
 *Robinson, J. T. (Ark.) Floor Leader
 *Walsh, T. J. (Mont.) Vice Chairman of Conference of Minority and Assistant Leader
 Sheppard, M. (Tex.) Whip

Steering Committee

*Robinson, J. T. (Ark.) ex officio
 *Walsh, T. J. (Mont.) ex officio
 Sheppard, M. (Tex.) ex officio
 *Swanson, O. (Va.)
 *Kendrick, J. B. (Wyo.)
 Ashurst, H. F. (Ariz.)
 *King, W. H. (Utah)
 Broussard, E. S. (La.)
 McKellar, K. (Tenn.)
 Copeland, R. S. (N.Y.)
 Tydings, M. E. (Md.)

HOUSE OF REPRESENTATIVES

(Preliminary caucus December 5, 1931)
 Snell, B. (N.Y.) Minority Floor Leader
 Bachmann, C. G. (W.Va.) Whip

Committee on Committees

(consisting of one member from each state having Republican representatives, chosen by these, and having voting power proportionate to their number)

(Preliminary caucus December 5, 1931)
 Garner, J. N. (Tex.) Speaker
 Rainey, H. L. (Ill.) Majority Floor Leader
 McDuffie, J. (Ala.) Whip and Chairman of Joint Committee
 Kniffin, F. C. (O.) Assistant Whip
 Milligan, J. L. (Mo.) Assistant Whip
 Pou, E. W. (N.C.) Chairman of Rules Committee

Committee on Committees composed of Democratic Members of Committee on Ways and Means

Sullivan, C. D. (N.Y.)
 Dickinson, C. C. (Mo.)
 McCormack, J. W. (Mass.)
 Eslick, E. E. (Tenn.) deceased
 Lewis, D. J. (Md.)
 Sanders, M. G. (Tex.)
 Vinson, F. M. (Ken.)
 Collier, J. W. (Miss.) Chairman
 Crisp, C. R. (Ga.)
 Rainey, H. T. (Ill.)
 Doughton, R. L. (N.C.)
 Ragon, H. (Ark.)
 Hill, S. B. (Wash.)
 Canfield, H. C. (Ind.)
 Cullen, T. H. (N.Y.)

Hawley, W. C. (Ore.) Chairman of Republican caucus

Arnold, W. W. (Ill.) Chairman of Democratic caucus

House, including sixteen Republicans, two Democrats, and the Farmer-Labor member, held a conference to discuss a tentative legislative program. Insurgents in the Senate absented themselves from the party caucuses, declining to go along with either side. The Democrats of the House met in caucus on December 5 to compromise differences and de-

termine organization. The Tammany delegation promised coöperation; a harmonious caucus was held; and nominations were voted. An innovation was the creation of the Democratic Joint Policy Committee.³ The rift which had opened in the Republican ranks in the prolonged balloting on Bertrand H. Snell and John Q. Tilson, in the contest for the nomination to the speakership in a preliminary conference, threatened to reappear in a struggle for the floor leadership when it became clear that the Democrats would elect the speaker. Tilson, however, withdrew from the fight when the caucus met on December 5.

The Democrats found themselves responsible for organizing the House. What the party alignment would be was not clear until shortly before Congress met. After the elections in 1930, the count stood: 218 Republicans, 216 Democrats, and one Farmer-Laborite; but deaths in the months following created fourteen vacancies, equally divided between districts held by Republicans and by Democrats. Elections in thirteen of these districts brought the party distribution, by the opening of the session, to 219 Democrats, 214 Republicans, and one Farmer-Laborite.

Beaming his satisfaction, Representative John N. Garner of Texas, on December 7, was escorted to the speaker's chair amid the applause of his confreres and took up the gavel to preside over the first Democratic majority in the House of Representatives since 1919. His sway rested upon a slender majority. The roll revealed 218 for Garner and 207 for Snell, six insurgent Republicans casting their ballots for George J. Schneider of Wisconsin. The three candidates refrained from voting.

In the Senate, the party line-up was: 48 Republicans, 47 Democrats, and one Farmer-Laborite.⁴ The presence of an insurgent Republican element rendered the balance very uncertain. The Senate was scarcely organized before this was demonstrated by the opposition to the reëlection of George H. Moses of New Hampshire as president *pro tempore*. The balloting continued day after day, the twenty-third ballot being cast on December 19, with the vote: Pittman, 34; Moses, 23; and Vandenberg, 14. In default of any other settlement, Senator Moses continued in office under a resolution of 1890 which prescribes that the president *pro tempore* shall serve until his successor shall have been appointed. With the exception of this incident, the Senate was organized without untoward difficulties. However, the insurgent elements in House and Senate had made their presence known.

³ See W. H. Humbert, "The Democratic Joint Policy Committee," in this REVIEW, June, 1932.

⁴ There were 17 new senators and 90 new representatives. Of the latter, 74 had never before served in Congress. Mrs. Hattie Caraway was the only woman in the Senate, but in the House there were six, evenly divided between the two parties.

Procedure. The most important change made in procedure—the adoption of a liberal rule for discharging committees—provided a means whereby *blocs* dissatisfied with the leadership of the House could bring forward questions for consideration.⁵ The conferences of both parties brought forth amendments for liberalizing the rules, differing only in detail. Representative Crisp of Georgia, former parliamentarian of the House, summarized the four changes advanced by the Democrats as follows: (1) that a majority of the members of the standing committee of the House be allowed to meet and conduct business whenever a majority of the committee so desired; (2) that when committees were called to report under the Calendar Wednesday rule, they be taken in turn, and that when the list was not completed in one session, the call be commenced in the next session where it left off in the preceding one, instead of going back to the beginning of the list (it appeared that under the old conditions some of the committees had not been called under the Calendar Wednesday rule for six years); (3) that provision be made for discharging recalcitrant conference committees should they fail to report within twenty days after their appointment; and (4) that a new rule be adopted governing the discharge of committees.

Specifically, this fourth suggestion proposed that when a committee should have had a bill for thirty days without taking action, a motion might be introduced calling upon it to report. If the motion were signed by as many as 145 members, and had been on the calendar for seven days prior to the time it was called up, the House might vote upon the measure and decide whether or not the committee was to be discharged. As Mr. Crisp stated, "The 145 is simply the number necessary to initiate the right for the House itself to vote twice a month as to whether or not it will discharge a committee. To discharge a committee, it would be necessary to have a majority of the membership of the House voting, a quorum being present." The discharge rule could not be evoked more than once upon the same subject during a session. A motion to amend these proposals as put forward by Mr. Crisp was voted down, and the new rules were accepted by a vote of 403 ayes to 7 nays (22 not voting). The changes in the rules advocated by the Republicans, while much the same as those sponsored by the Democrats, made no provision for discharging the Committee on Rules from a resolution calling for a special order. Under the new rule, this committee can now be brought to answer. Not only is the committee thus prevented from thwarting the will of the majority, but also under the new rules the speaker must not entertain any dilatory motions once the work of a committee has

⁵ For a discussion of the proposed changes in the Private Calendar and the Consent Calendar, see article by Congressman Luce in this number of the REVIEW.

been brought before the House for consideration. The Republican recommendation did not include this provision against dilatory motions. Both parties sought credit for the change in the rules, although the debate brought forth sarcastic references to the Republicans' "sudden conversion." "I have been intensely amused by the sudden liberality and generosity of the now minority Republican side," said one Congressman. "It suggests the liberality of giving away straw hats in December." Mr. Sabath of Illinois seemed to reflect the views of his fellows when he said: "Today, after twenty-two years, thanks to the Democratic majority, we have again a chance and an opportunity to liberalize the rules and to relieve the membership from the extremely restrictive and established rulings which have been in effect the last ten years of Republican rule." Representative Luce, on the other hand, contended that the Republican attitude was no eleventh-hour change occasioned by the fact that the party was now in the minority. "When," he said, "our Republican conference met in February and decided to take some definite action upon the matter of liberalizing our rules, we fully expected to have our own party represented in that chair and to be in the majority on this side."

Although the parties wrangled jealously as to which was responsible for the change, an examination of the use to which the discharge rule was put raises the question as to whether it can be regarded altogether as an unqualified improvement. During the session, nine motions to discharge committees from the consideration of bills were filed, of which four were entered on the calendar for these motions and five failed to secure the required number of signatures for such entry. Of the four thus entered, three were rejected by the House and one was accepted. These four petitions are worthy of note. If the rules were liberalized in order to give minority views more weight, the petitions in this Congress certainly brought forward matters that the leaders wished to ignore. Through H. J. Res. 208, the effort was made to bring about a vote on prohibition by proposing a constitutional amendment toward state control of the liquor traffic. The Committee on the Judiciary voted 14 to 9 against the resolution, and the House sustained this verdict on March 14 by voting 187 to 227 against discharging the committee from further consideration of the resolution.*

The rule was evoked again on May 23, when a motion was introduced to discharge the Committee on Ways and Means from consideration of H. R. 10017, the bill legalizing and taxing 2.75 per cent beer. The question was immediately raised as to whether bringing up the prohibition

* An idea of how the states divided on this prohibition vote is given in the following analysis published in the *New York Times* of March 15. The table lists the states as "wet," "dry," or "divided," according to the vote of the majority of the

problem again was not an infringement of the rule which provided that petitions for discharge should not be used more than once a session upon the same subject matter. This matter of interpretation was settled quickly, however, when Mr. Crisp explained: "... in seeking to stop any filibuster, there is a provision in the rule that after the House has voted on one substantive subject-matter, other motions to discharge cannot be made dealing with that same subject-matter. In my discussion of the matter on the floor of the House and in the caucus, I frankly and honestly

state delegation, and designates the states "D" or "R" that are usually Democratic or Republican in national elections:

<i>Wet</i>	<i>Dry</i>	<i>Divided</i>
Arizona, D.	Alabama, D.	Louisiana, D.
California, R.	Arkansas, D.	Minnesota, R.
Connecticut, R.	Colorado, R.	Montana, R.
Illinois, R.	Delaware, R.	New Hampshire, R.
Maryland, D.	Florida, D.	
Massachusetts, R.	Georgia, D.	
Michigan, R.	Idaho, R.	
Missouri, R.	Indiana, R.	
Nevada, D.	Iowa, R.	
New Jersey, R.	Kentucky (7 absent), D.	
New Mexico, D.	Kansas, R.	
New York, R.	Maine, R.	
Ohio, R.	Mississippi, D.	
Pennsylvania, R.	Nebraska, R.	
Rhode Island, R.	North Carolina, D.	
Washington, R.	North Dakota, R.	
Wisconsin, R.	Oklahoma, R.	
Wyoming, R.	Oregon, R.	
	South Carolina, D.	
	South Dakota, R.	
	Tennessee, D.	
	Texas, D.	
	Utah, R.	
	Vermont, R.	
	Virginia, D.	
	West Virginia, R.	

On January 21, the Senate, by a vote of 55 (26 Republicans, 28 Democrats, and 1 Farmer Labor) to 15 (8 Republicans and 7 Democrats), defeated a resolution offered by Senator Hiram Bingham asking governors to hold prohibition referenda in their states. S. 436 to legalize 4 per cent beer, although favorably voted by a sub-committee of the Senate Committee on Manufactures, was reported adversely to the Senate by the full committee on April 29, together with S. 2473, an act to increase permissible alcoholic content of beer to 3.2 per cent. On May 18, two amendments to the revenue bill proposing a tax on beer were defeated in the Senate, i.e., the Tydings amendment by 61 to 24, and the Bingham amendment by 60 to 23.

said I thought there was a difference between a motion to discharge a committee dealing with a constitutional amendment and a motion of the kind now before the House." Despite the pleas of its advocates that the passage of this bill would put millions in the treasury and "a smile on the faces of the people," the House voted down the motion to discharge the committee by 228 yeas to 169 yeas, 35 not voting. The opinion of Chairman Summers of the Judiciary Committee that it was unwise "to rock the boat" at this time by interjecting a controversial issue was agreed to by many. By the way in which the discharge rule here focussed attention upon a question that might otherwise have been ignored in the interest of political expediency, the rule promises to sharpen the representative character of Congress.

Another aspect of the rule appeared, however, when it was used to challenge the direction of legislation in financial matters. Is it desirable that a *bloc* have the power to intervene in the interest of a particular class and demand aid? The sentiment was expressed in this Congress that where a concerted effort was being made toward economic rehabilitation under responsible leadership, financial measures lacking the sanction of this leadership should not be forced through under the discharge rule. A case in point arose on March 28 when it was moved that the Committee on Rules be discharged from further consideration of H. Res. 117, which was a proposed rule for the consideration of H. R. 4650. This bill, authorizing the appropriation of \$100,000,000 for relief in certain drainage and irrigation districts, had been favorably reported by the unanimous vote of the Committee on Irrigation and Reclamation, but a resolution to get the measure before the House was voted down by the Committee on Rules. The issue was clear-cut between the advocates of the bill and the Rules Committee. The bill admittedly was designed to aid certain definite communities. Said Chairman Pou: "The members of the Committee on Rules, in the exercise of our conscientious legislative duty as we saw it, have not seen fit to give preferential status to this measure. I am willing to stand until doomsday to keep off of the floor of this House all measures except those which are absolutely necessary to run the government. (Applause)." The committee was upheld by a vote of 132 yeas to 203 yeas, with 97 not voting.

The Committee on Rules fared differently in the vote on the soldiers' bonus. Here the leaders of the House on two most important committees were definitely opposed to the measure; but in this case they were overridden. On May 7, the Committee on Ways and Means, after extensive hearings, reported back adversely H. R. 7726. This bill, proposed by Representative Patman of Texas, provided that the veterans should be paid immediately the face value of their adjusted compensation cer-

tificates by the issuance of \$2,400,000,000 in Treasury notes. H. Res. 220 was introduced requesting the Committee on Rules to provide a special order for consideration of the bill. The Committee did not respond. Accordingly, on June 13 the discharge rule was successfully evoked, and the matter was taken from the hands of the committee by a vote of 225 to 175. The resolution itself was then adopted by a vote of 225 to 169, and the "bonus bill" accordingly came before the House the next day. A hot debate ensued, during which Representative Eslick, in the midst of a speech defending the bill, was suddenly stricken and fell to the floor dead. The House recessed for ten minutes and agreed to postpone debate on the bill until the next day. It was then decided to eliminate general debate and present further arguments through an "extension of remarks." The bonus measure was approved in the House by a vote of 209 (153 Democrats, 55 Republicans, 1 Farmer-Labor) to 176 (126 Republicans, 50 Democrats). The Senate Committee on Finance reported the bill adversely by a vote of 14 to 2 on June 16, and on the following day the second chamber defeated the measure by 62 (35 Republicans, 27 Democrats) to 18 (10 Democrats, 7 Republicans, 1 Farmer-Labor, 16 not voting), afterwards ordering a motion to reconsider the vote "laid on the table." The threat of a presidential veto lowered in the background throughout, and the measure seemed foredoomed to failure from the start.

Without passing judgment upon the merits of these questions considered under the discharge rule, it is evident that they were matters initiated largely by certain sectional or group interests. Although in their implications they were certainly of concern to the entire nation, the force that gave them impetus came from an active minority separate from the recognized leaders in the House. Inasmuch as each *bloc* acts as such simply under the stimulus of interest concerning a particular issue, and tends to dissolve once the immediate end has been won, it cannot be held to account later for the results of its action. Moreover, it seems scarcely feasible to put through a specific act calling for large appropriations without taking into consideration the general program of fiscal legislation as sponsored by the responsible leaders. Perhaps the discharge rule will prove significant in its negative rather than its positive aspects, as a protection against oligarchy rather than as an instrument of constructive law-making.

The chief tool of the majority leaders to expedite legislation was used frequently: 29 special orders were reported favorably by the Committee on Rules, and 27 of these were agreed to by the House. The two special rules rejected would have called up bills concerned with relieving certain areas: H. R. 4650 provided funds for irrigation districts and H. R. 4668 concerned flood control on the Mississippi. Twenty-four House resolutions

calling for special rules were not acted upon by the Rules Committee. Special orders were granted and agreed to for the bills relating to relief, the tariff, the Reconstruction Finance Corporation, home loan banks, the anti-injunction act, veterans' compensation, Muscle Shoals, certain immigration measures, and several appropriation bills. Nevertheless, the party leaders did not call for a special order to consider the very important tax bill H. R. 10236. Floor Leader Rainey explained: "We did not bring this bill in under a rule. We could have done so. We brought this bill in in order to permit the freest expression of opinion and the freest debate possible and not to gag this House. (Applause.)

Lame Duck Amendment. With the aid of a special rule, H. Res. 133; a procedural matter of long standing was brought to the attention of the House on February 12. This was the so-called Norris lame duck amendment. In previous Congresses, a vote was reached in the House on two occasions; once the measure was passed by a substantial majority, but failed to attain the necessary two-thirds. In the 71st Congress, the measure passed the House but died in conference, no agreement being reached with the Senate before the end of the short session. On January 6, 1932, by 63 yeas to 7 nays (25 not voting) a favorable vote was recorded in the Senate. A vote was taken in the House on February 16, when S. J. Res. 14 was passed by a vote of 335 yeas, 56 nays, 40 not voting. No fundamental disagreement was disclosed as to the principle involved, the amendments considered by the conference being concerned with relatively unimportant details. The conference report was agreed to by the House on March 1, and by the Senate on the next day. As finally passed, the resolution proposes to the states an amendment to the Constitution providing that the terms of the President and Vice-President shall end on the 20th day of January and the terms of senators and representatives on the 3rd day of January of the years in which their terms would normally have ended. It likewise provides that Congress shall assemble annually on January 3, so that the newly elected legislators may begin their work at once. By September, seventeen states had ratified the amendment.

While discussing significant procedural developments in this session, another topic of constitutional interest should be mentioned. In the Pocket Veto case,⁷ the Supreme Court made clear the powers of the President with regard to the rejection of bills. His powers in approving legislation were clarified in a decision rendered on May 31.⁸ Accordingly, with regard to the approval of bills the President found himself in an easier situation than at the close of the preceding Congress. During the last twenty-four hours of the session closing on March 4, 1931, the Chief

⁷ 279 U.S. 655.

⁸ *Thomas C. Edwards v. United States*; no. 790.

Executive was presented with 184 bills for his consideration. This excessive pressure demanded relief. Precedent was found in the case of President Wilson, who signed several bills after the adjournment *sine die* of the second session of the 66th Congress. Relying upon the opinion of Attorney-General Mitchell that there is no ground for a distinction as to the President's power to sign bills after the close of a session as distinguished from the final adjournment of a Congress, President Hoover delayed approval in some cases until after the adjournment of Congress, but within the constitutional ten-day period. In upholding his action, the Court said: "No possible reason, either suggested by constitutional theory or based upon supposed policy, appears for a construction of the Constitution which would cut down the opportunity of the President to examine and approve bills merely because Congress has adjourned. No public interest would be conserved by the requirement of hurried and inconsiderate examination of bills in the closing hours of a session, with the result that bills may be approved which on further consideration would be disapproved or may fail although on such examination they might be found to deserve approval." President Hoover took advantage of this decision, signing a score or so of bills during the first week after the adjournment of Congress. His approval of the Home-Loan Bank Bill and of the Emergency Relief and Construction Act was not announced until nearly a week after the session's end.

The President and Congress. The question of leadership was not clearly answered during the session. Practically all of the recommendations made by the President in his message of December 8 were given consideration by Congress, and most of his suggestions were acted upon, in many cases in accordance with the general lines laid down by the Chief Executive. The revision of railroad regulation was urged, and the reorganization of the public works administration: in both cases, however, the Rules Committee did not see fit to report a special order when resolutions to get these questions before the House were introduced. In frequent messages, the President kept Congress informed as to his views. For example, from December through April, in no less than twenty-one messages, statements, and addresses he urged the importance of federal retrenchment and the necessity of balancing the budget. During the session he transmitted to Congress sixty-three messages. Moreover, he did not hesitate to threaten the veto or to use it upon a measure that he regarded as impolitic. Of the seven veto messages, two dealt with bills of a decidedly political character. In the case of the tariff bill (H. R. 6662) and the relief bill (H. R. 12445), the President asserted himself as a director of national policy; while in vetoing the other measures he acted rather as "chief administrator."

Disapproval in the latter cases served to show the usefulness of the veto power as a guard against hasty and ill-considered legislation;⁹ and Congress received the notice of executive disapproval without any attempt to defend its measures. The pocket veto, which was used in only one instance, disposed of an agricultural loan bill (S. 4780) which had been hurriedly passed during the closing hours of Congress. Apparently, this measure was put through without realization that its purposes would be accomplished under the provisions of the Reconstruction Finance Act.

When the President attempted to go beyond the sending of messages and the signing of vetoes, his difficulties began. He was confronted with a dilemma: if he attempted aggressive leadership, he was cried down as a dictator; if he made no specific suggestions, he was accused of shirking his burden of direction and guidance in a national emergency. The President's attitude was not entirely consistent: on some occasions he harshly called Congress to task for its dilatory tactics and on others he refrained from comment in the face of chaotic conditions in the legislature. For the most part, however, he held to a conciliatory viewpoint. He made frequent use of conferences at which legislators of both parties met with administrative officials. Yet in a situation demanding the closest coöperation between the administrative and legislative branches, friction developed. There was a determination to cut appropriations, but apparently no concerted view of the problem as a whole on the part of Congress or of the administration. Accusations were made that cabinet members attempted to dissuade the Appropriations Committee from cutting the funds for their respective departments. Representative Percy H. Stewart stated: "Did I say that the President refused to call off the administration lobbyists who swarmed around the Appropriations and other committees? On the contrary, he sent one of his own secretaries, a former member of this body, onto the floor of this house to lobby against certain provisions of the economy bill; and when they were defeated—not by the Democratic majority but by the members on the Republican side, whom the President's secretary had instructed to vote against these provisions—the President issued a statement denouncing the members of this

⁹ In his message vetoing S. 2179, the President cited some rather startling instances of undeserved grants of pensions in the bill. Investigation disclosed a proposed pension for a man for self-inflicted injuries incurred in attempted suicide; a widow whose husband gave eight days' service, with no disability relating to service; a man who spent most of his service in the hospital, who was shown to have been guilty of malingering by taking soap pills to aid him in appearing anemic, and who was discharged without honor because of diseases not contracted in line of duty; a claimant who lost his leg as the result of lying in a completely intoxicated condition along the line of a street car. In justice to Congress, it might be added that the bill contained hundreds of items, and was designed for claimants unable to comply with the general laws. The bill was referred back to the committee for more careful consideration.

house for the form in which the bill passed." Partisan accusations of this sort resulted if the President tried to work unobtrusively to attain his ends, yet he did not escape criticism if he publicly urged that Congress act upon certain measures. On many occasions the opinion was expressed that the White House was attempting to place Congress in an unfavorable light before the country.

On May 31, the President, apparently thinking that his public utterances and special messages had not sufficed, addressed the Senate in person, telling that body in no uncertain terms how grave he thought the national situation and how urgent he considered immediate action to balance the budget. The effectiveness of this plea remains open to doubt. The Senate, in any event, was on the point of voting upon the revenue bill. The repercussions in the legislative body were not altogether fortunate. While the President was hailed in some quarters for his rebuke to Congress and a flood of congratulatory telegrams poured into the Executive Offices, the views expressed in the Senate were far from laudatory. Senator Harrison was particularly caustic: "Some of the press go so far as to give the impression that the Paul Revere ride of the President yesterday to this chamber bludgeoned the Senate into the passage of the revenue bill, and that if it had not been for that sensational and historic ride perhaps we would still be here considering the revenue bill." The next day, the President made an important statement to the press repeating his plea for economy and revenue legislation to balance the budget. "This is not a controversy between the President and Congress or its members. It is an issue of the people against delays and destructive legislation which impair the credit of the United States."

The conflict between executive and legislature could not be thus easily turned aside. The fact remained that friction was bound to be persistent where party alignment was so close and where both sides, while asserting political neutrality in the face of an economic crisis, were yet ever conscious of the political battle impending in the next election. With each side suspicious that the other would attempt to claim the credit for what Congress accomplished, unified leadership in a bi-partisan program of reconstruction was well-nigh defeated at the start. There was always the danger that over-zealous supporters and party leaders would turn a presidential victory to partisan account. When stung by the rebukes of Mr. Hoover, Democrats in Congress were not loath to state that the President had opened his campaign for reelection. Early in the session, Speaker Garner had stated: "We, too, have our ideas as to how to effect improvements and economies in the national administration. If the President is sincerely desirous of such improvement, there is no reason why we should not act together. If he did that, he would coöperate;

what he seeks instead is to dictate, and nobody can dictate to the Democratic group in Congress." The Speaker later demonstrated in his own experience the truth of this last statement. Difficulties came in this Congress not so much from want of leadership as for lack of followers.

Pressure Groups. Because of the very nature of the problems confronting Congress at this session, pressure groups were particularly active. Taxation and tariff legislation, of course, brought many interested persons to the capital seeking favors or protection and stimulated increased effort on the part of groups already there. Business men found their concerns closely affected; the agricultural organizations urged their views of farm relief and taxation; organized labor had much to say. In Senator Glass's opinion, the bankers had too much to say. He called the attention of the Senate to the concerted propaganda which was going on against his measure H. R. 4115. The senator stated: "Here are people who confessedly have not read the provisions of the bill and who do not understand the measure, wiring all over the country suggesting that the banking associations of the respective states wire to their senators in opposition to a bill, the precise meaning of which they do not yet comprehend." It was the relief and economy programs that perhaps stirred up special groups and sections more than any other kind of legislation. Senator Fess stated that examination of a senator's mail showed the difficulties in the situation. Two types of letters came in, he explained, all of them favoring balancing the budget, but one type protesting against cutting down appropriations of benefit to them and the other objecting to a tax on their particular commodity. One representative, who had received more than 800 telegrams protesting the abolition of the vocational educational schools and reductions of federal salaries, said an unofficial count had convinced him that 10,000 telegrams on this matter had flooded the House from all parts of the country. Other congressmen had similar stories to tell. Legislators found themselves in an embarrassing predicament. Whereas in normal times they could count upon the general apathy of the voter to condone the palliatives given to active minority groups demanding favors, in the face of the enormous deficit they feared arousing the taxpayers. Representative McDuffie reminded his colleagues: "We live here in Washington in this keyed-up atmosphere and under pressure. We are surrounded by lobbyists of this minority and that minority. . . . The people back home are going to speak to the next Congress in no uncertain terms. . . . In the next Congress, you will see here the representatives of the taxpayers who will urge their cause before Congress. The great unorganized majority are going to organize; they will speak and in no uncertain terms. Let us not forget them today."

Along with this thought of the impending election went the recognized need of balancing the budget. Under the scourge of the President's reprimands for delay and equivocation, Congress felt impelled to resist the pressure from special interests and to appear to advantage before a critical general public. Yet, despite all this, the economy program suffered from the concessions made to various minorities; the tariff provisions in the tax bill revealed group demands; and the relief bill as first reported was, many thought, unduly favorable to certain localities. Some groups actively lobbied for relief; others protested taxation. "The weekly radio broadcasts by the spokesmen and errand boys for big business and concentrated wealth have brought to each senator's desk during the winter letters upon letters protesting against government expenditures and demanding economy and tax reductions," one senator stated. The absence of forehanded and aggressive leadership from either party chiefs or the President made it that much more difficult for legislators to resist pressure by presenting a united front. On May 20, Senator Wheeler introduced S. Res. 215 calling attention to the charges of lobbying activity that had been going about and demanding an investigation. References to "selfish interests" were frequent during the session, and the President called public attention to "the locust swarms of lobbyists who haunt the halls of Congress seeking selfish privilege for special groups and sections of the country, misleading members as to the real views of the people by showers of propaganda."

Special Presidential Message and Banking Legislation. In a special message to Congress on January 4, Mr. Hoover stated that "the paramount importance of constructive action" was even more apparent than when he first called upon Congress in December. Likening the depression to a great war, he called for a united effort to better conditions and outlined the measures demanding early attention. Definite recommendations were accordingly put forward which, the President said, had been "largely developed in consultation with leading men of both parties, of agriculture, of labor, of banking, and of industry." The following subjects were cited: (1) the creation of a reconstruction finance corporation; (2) strengthening the federal land bank system; (3) establishing a system of home loan discount banks; (4) enlarging the discount facilities of the federal reserve banks to take care of emergencies and developing a plan to relieve distress of small depositors in closed banks; (5) revision of the laws relating to transportation as suggested by the Interstate Commerce Commission; (6) revision of the banking laws better to safeguard depositors; (7) restoration of public confidence through measures to balance the budget.

The President set forth a large task in these proposals and one that

occupied Congress, not only in the weeks immediately following, but likewise well into July, long past the time when it was anticipated that the session would close. To consider the outcome of these specific recommendations is to note some of the most important work undertaken during the session. The subjects listed in the message were disposed of in the course of the session, as follows:

(1) The passage of the law instituting the Reconstruction Finance Corporation was expedited by the introduction of similar bills in both chambers, where various amendments were added. The conferees' reports were accepted by both houses on January 22, and the bill (H. R. 7360) was signed the same day (Public No. 2).

(2) A bill (H. R. 6172) providing \$125,000,000 additional capital to the federal land banks, of which amount \$25,000,000 was specified for extending credit to loans based on mortgages from these land banks, was approved January 23 (Public No. 3).

(3) Another important credit measure became law on July 22 when the President approved the Home Loan Bank Bill (H.R. 12280, Public No. 304). He explained the act in part as follows: "Its purpose is to establish a series of discount banks for home mortgages, performing a function for home owners somewhat similar to that performed in the commercial field by the federal reserve banks through their discount facilities. There are to be eight or twelve such banks established in different parts of the country with a total capital of \$125,000,000 to be initially subscribed by the Reconstruction Finance Corporation."

(4) Credit expansion was provided for, notably in the Glass-Steagall bill (H. R. 9203). The measure was handled in expeditious fashion, being voted in the House under a suspension of the rules and passed by 350 to 15 on February 15. The Senate approved the measure without a record vote on February 19 (Public No. 44). In signing the bill eight days later, the President commended Congress for the "fine spirit of patriotic non-partisanship shown," and referred to the bill as a "national defense measure." The Glass-Steagall bill permits the federal reserve banks to use direct obligations of the United States government as collateral for federal reserve notes, thus releasing gold for other purposes. The federal reserve banks are also empowered to make advances to member banks on paper which was previously ineligible for discount. In brief, the bill amends the federal reserve law so as to provide for an expansion of credit facilities. Provisions for strengthening the federal intermediate credit banks were adopted in S. 2409 (Public No. 138, approved May 19, 1932). This act authorized federal reserve banks to discount notes payable to and bearing the endorsement of any federal intermediate credit bank covering loans made by that bank.

(5) The House Committee on Interstate and Foreign Commerce reported two important measures on railroads which were not acted upon further. H. R. 11643 amended the section of the Interstate Commerce Act which covers consolidation and control of interstate carriers; H. R. 11677 amended the section of the act as regards recapture, valuation, rates, and holding companies. The bills were reported May 19 and May 7, respectively, though no efforts were made to bring the proposals to a vote.

(6) Two other important banking bills considered were the Glass bill (S. 4115), designed to provide for "safer and more effective use of the assets of the federal reserve banks and of national banking associations, to regulate inter-bank control, and to prevent the undue diversion of funds into speculative operations," and the Steagall bill (H. R. 11362), intended to "amend the national banking act and the Federal Reserve Act and to provide a guaranty fund for depositors in banks." The first bill did not get beyond the committee stage, while the second passed the House and was referred to the Senate Committee on Banking and Currency. The so-called Goldsborough bill (H. R. 11499) would amend the Federal Reserve Act by charging the Federal Reserve Board with the duty of restoring and maintaining the purchasing power of the dollar, as ascertained by the Department of Labor in the wholesale commodity markets 1921-29, by controlling through the federal reserve system the volume of credit and currency. The bill was reported favorably by the Committee on Banking and Currency, passed the House, on May 2, by 289 yeas to 60 nays under a suspension of the rules, and was debated in the Senate.

While important in themselves, and significant from the viewpoint of economics and fiduciary policy, the enactment or consideration of these particular measures providing for credit expansion or banking reform did not stir up the political forces that were aroused by the problem of balancing the budget. The President explained in his budget message of December 9 that the deficit for the fiscal year 1931 was \$902,000,000, that the estimated deficit for 1932 was \$2,123,000,000 and for 1933 \$1,417,000,000, bringing the total to a formidable \$4,442,000,000. The problem, then, was to increase taxation, effect economies, and yet provide enormous sums to relieve the nation-wide distress. It was to this economic paradox that Congress and the President addressed their energies.

Economy and Reorganization. "Only appropriations for what is absolutely necessary will be made. We will have to cut the federal government expenses," Speaker Garner declared (January 16), following a conference with the President. Minority Leader Snell concurred. The Senate

adopted a resolution (S. Res. 120), on January 15, that the Committee on Appropriations reduce all estimates in the budget as far as consistent with governmental commitments and financial conditions.

An interesting move in this direction was taken on February 16 when H. Res. 147 was introduced creating a committee of five members to investigate what, if any, federal bureaus might be abolished, restricted in activity, or consolidated. The next day, the President, in a special message, strongly urged that in the interest of economy and efficiency a gradual but thoroughgoing scheme of reorganization be authorized. He recommended adoption of the principle that executive and administrative activities be placed under single-headed responsibility, and that advisory, regulatory, and quasi-judicial functions be performed by boards and commissions. Citing specific changes that should be made and new offices created, he suggested that the authority for such reorganization be lodged directly in the hands of the Chief Executive. He stated: "Proposals to the Congress of detailed plans for the reorganization of the many different bureaus and independent agencies have always proved in the past to be a signal for the mobilization of opposition from all quarters, which has destroyed the possibility of constructive action. There is little hope for success in this task unless it is placed in the hands of some one responsible for it, with authority and direction to act." H. Res. 151 was adopted February 23 creating a committee to investigate, in coöperation with the standing committees on appropriations and expenditures in the executive departments, and to make recommendations on reorganization to the House.

There was some feeling in the House that the President was trying to take to himself credit for improving conditions, and considerable rivalry between the executive and legislative branches became evident. On March 8, for example, the President declared in a public statement that the "whole of the administrative officials are coöperating with the Special Economy Committee appointed by the House of Representatives, that little room was left for further reduction in expenses by administrative officials, and that further economies demanded legislative action." This assertion was taken by Chairman Byrns of the House Committee on Appropriations as an attempt on the part of the President to "assume credit in advance for any economies that the committee may bring about as a result of the investigation it is now making." It was stated that administrative officials had volunteered very few suggestions, and that the President himself had failed to make definite proposals. This charge was reiterated when, about a month later, the President recommended that a board be formed to coördinate the work in the House and Senate with that of the administration toward economy and reorganiza-

tion, to the end that a national program of economy be framed for legislative action. Mr. Hoover stated: "Any program of legislation for fundamental changes in the laws affecting reduction of government expenditures involves a very large amount of detailed research and detailed consideration. . . . The development of such a program requires the closest coöperation between the executive and legislative branches of the government. It is most desirable that such a program shall be presented on an entirely non-partisan basis, on which we all take our measure of responsibility." Senator Robinson saw in the President's proposal an effort to make a budgetary body out of Congress by shifting his responsibility. "He is asking a mixed commission to perform duties that are his," said the Democratic leader. "It appears to me," the President said in his message, "that with four different agencies of the Congress at work on the problem, operating independently with the different departments, the time which has already elapsed and the short time available to us before the beginning of the fiscal year all point to the absolute necessity of better organized unity of effort in all the branches of the government primarily concerned with the problem." It was with a distinct tone of asperity that the House leaders responded. Demands were made for definite proposals from the President, while his motives in making public appeals were suspect. Referring to the President's message, Chairman Byrns of the Appropriations Committee stated: "It is time to quit talking and quit trying to play politics with reference to these appropriations and get down to business." The press took the view that the President's message, in calling the attention of the country to the delay in Congress, would force that body, under pressure of public sentiment, to abandon partisan considerations and enact the needed legislation.

As a matter of fact, after weeks of consultation and discussion had elapsed, little or nothing was agreed upon. Generalities and recriminations filled the air. The specific guidance sought from the White House had not appeared. Finally, Democratic Senator Byrns of South Carolina presented a resolution in effect challenging the President to indicate the course to be pursued. The next day, President Hoover invited the Economy Committee to meet at the White House with a view to preparing a definite, comprehensive bill setting forth a national economic program. An all-day conference resulted between the committee and administrative officials. Besides the President, the Secretary of the Treasury, the Postmaster-General, the Secretary of the Interior, and the Director of the Budget attended. In view of the progress made, another meeting was held on March 13.

The President regarded this procedure as particularly suited to map-

ping out a general program of legislative action. In effect, it reduced the work of the Appropriations Committee to a place of minor importance and was intended to bring about a closer understanding between legislators and administrative officials. Nevertheless, it did not guarantee agreement. The committee rejected the President's furlough plan for federal employees in favor of an outright pay cut of eleven per cent, with exemption of \$1,000 incomes, although it followed his lead on other points. Most important, perhaps, was its acceptance of a compromise scheme whereby conditional blanket authority was given the President to effect reorganization, subject to the approval of Congress. All the proposals for economy were combined in a general omnibus bill which, under a special rule, was made an amendment to the pending legislative appropriation bill. Provision was likewise made for presenting a limited number of amendments. The bill was debated at length and materially altered before passing on to the Senate. The recommendations of the President and the Economy Committee were overridden and the bill slashed. As reported to the House, the measure was expected to provide for a retrenchment in federal expenditures of about \$200,000,000; as received by the Senate committee, this estimate was reduced to \$40,000,000. A special sub-committee of three Republicans and three Democrats was appointed to consider the measure with all possible speed. They met in conference with the President, and afterwards with the members of the special House Economy Committee. The recommendations of the committee served as the starting points for prolonged debate, which was finally concluded when the bill passed the Senate June 8 carrying the provision for the furlough plan previously rejected by the House. In conference committee, this provision was finally accepted by the lower chamber. The bill (H. R. 11267) was sent to the President, who approved it on June 30. Despite the extraordinary arrangements made for conferring and reconciling differences, the bill, in the course of its passage, was revised four times. It was rewritten on the floor of the House, altered in the Senate committee, changed in the Senate, and further revised in conference. As to the amount of savings actually provided, estimates vary from \$150,000,000 to \$180,000,000. The core of the economy lies in the reduction of the government pay-roll and in the retrenchment to be effected through coördination, consolidation, or regrouping of the administrative agencies of the government. It is this item which perhaps gives the act any lasting significance. The act states in part: "In order to further reduce expenditures, and increase efficiency in government, it is declared to be the policy of Congress (a) to group, coördinate, and consolidate executive and administrative agencies of the government as nearly as may be according to major purpose; (b) to re-

duce the number of such agencies by consolidating those having similar functions under a single head; (c) to eliminate overlapping and dupli-

RECAPITULATION OF APPROPRIATION ACTS, FIRST SESSION OF SEVENTY-SECOND CONGRESS

Act	Total Budget estimates	Totals of bills as reported by House Committee on Appropriations	Appropriations	Increase (+) or decrease (—) appropriations compared with Budget estimates	Increase (+) or decrease (—) appropriations Seventy-Second Congress, first session, compared with Seventy-first Congress, third session
<i>Regular Annual Acts</i>					
Agriculture.....	\$188,693,405	\$175,443,814	\$175,671,665	—\$13,021,740	—\$39,907,197
District of Columbia.....	44,094,919	39,913,810	41,245,622	—2,849,297	—4,427,216
Independent Offices.....	1,041,395,041	986,446,506	982,446,041	—58,949,000	—70,330,969
Interior.....	52,840,352	50,431,432	45,533,672	—7,306,680	—43,713,934
Legislative.....	22,094,022	20,214,869	18,673,991	—3,420,031	—8,299,194
Navy.....	341,677,450	326,340,466	317,583,591	—24,093,859	—40,670,361
State, Justice, Commerce	129,784,136	124,401,318	112,291,970	—17,492,166	—25,131,984
Labor.....	16,683,071	15,190,859	13,663,792	—3,019,279	—3,858,531
State.....	53,900,364	50,751,275	45,996,000	—7,904,364	—5,243,201
Justice.....	44,716,304	44,129,857	39,711,408	—5,004,896	—14,620,822
Commerce.....	14,484,397	14,329,327	12,920,770	—1,563,627	—1,409,430
Labor.....	1,083,078,405	1,059,898,563	1,056,247,833	—26,830,572	—26,901,090
Treasury and Post Office.....	269,016,418	254,311,988	250,308,158	—18,708,260	+8,443,012
Treasury.....	814,061,987	805,586,575	805,939,675	—8,122,312	—35,344,102
Post Office.....	411,363,762	386,793,861	396,078,513	—15,285,249	—49,687,222
War Department.....	301,030,642	281,349,606	289,500,024	—11,530,618	—45,205,941
Military.....	110,333,120	105,444,255	106,578,489	—3,754,631	—4,481,281
Non-military.....	3,315,021,493	3,169,884,639	3,145,772,899	—169,248,594	—309,069,167
Total, regular acts.....					
<i>Deficiency and Miscellaneous Acts</i>					
First Deficiency Act 1932.....	141,031,184	125,886,262	126,250,333	—14,780,850	+16,946,511
Second Deficiency Act 1932.....	22,779,019	15,398,873	22,682,369	—96,650	—61,308,662
Total deficiency.....	163,810,203	141,285,135	148,932,703	—14,877,500	—44,362,151
Total Regular Annual and Deficiency Acts.....	3,478,831,696	3,311,169,774	3,294,705,602	—184,126,094	—353,431,318
<i>Miscellaneous, Relief, Claims and other Acts</i>					
Emergency Relief and Construction.....	322,224,000		322,224,000		
Reconstruction Finance Corp.....	500,000,000		500,000,000		
Federal Land Banks.....	125,000,000		125,000,000		
Veterans' Administration:					
Adjusted Compensation.....	203,925,000		203,925,000		
Pensions.....	12,750,000		12,750,000		
Miscellaneous.....	1,214,500		1,046,500	—168,000	
Total, special acts.....	1,165,113,500		1,164,945,500	—168,000	+848,528,122
Grand total.....	4,643,945,196		4,459,651,102	—184,294,094	+495,096,804
Permanents and indefinites.....	1,285,907,728		1,285,907,728		+71,937,059
Total.....	5,929,852,924		5,745,558,830		+567,033,863
Deduct estimated savings for 1933 due to Economy Act.....			150,000,000		—150,000,000
Net total.....			*5,595,558,830		+417,033,863

* Not including deduction for postal revenue of fiscal year 1933, estimated at \$725,000,000.

cation of effort; (d) to segregate regulatory agencies and functions from those of an administrative character." It is further provided that when

the President makes an executive order under the provisions of this act, such order shall not become effective until after the expiration of sixty calendar days unless Congress approves it in the interim.

Taxation. The hearings before the Committee on Ways and Means got under way on January 13, when the Treasury Department submitted its program. An increase in income rates and a selective sales tax were suggested. Scores of persons were heard until February 5, after which meetings in executive session were held almost daily to frame the 60,000-word tax bill. The committee had made some concessions to those threatening opposition (as, for example, the import tariff on oil demanded by the members from the oil-producing sections of the West). No minority opposition group appeared on the committee, and Acting Chairman Crisp anticipated no extended discussion in the House. "I know of only two members who favor the bill whole-heartedly," Floor Leader Rainey stated; "At the same time, I have no doubt whatever of its passage." Representative Snell agreed. But when debate got under way on March 10, a coalition of rebellious Democrats and Republicans quickly arose to criticize the sales tax provision. Rallying under the leadership of LaGuardia of New York, the "allied Progressives" proposed reviving the war-time surtaxes on wealth as a substitute measure for the sales tax. Said Mr. Fuller: "We are willing to coöperate. We are willing to balance the budget. But we are not willing to balance the budget by going out and conscripting the wealth of the poor people of this country. If anybody is conscripted, it should be those who are in a position to carry the burden." A surtax of almost the war-time level, proposed by Representative Swing of California, was voted, on March 18, by 153 to 87. Party control was gone. Undisciplined party members defying leadership in a presidential election year did not presage well for the coming campaign. With opposition to the sales tax coming mostly from the Democratic side, John J. Raskob, chairman of the Democratic National Committee, and Jouett Shouse, executive committee chairman, issued a plea from party headquarters calling for unity, but to little avail. On March 16, a group of some fifty Democrats met in conference to organize an opposition *bloc*, while the allied Progressives under LaGuardia in caucus resolved to force the whole tax measure back into committee. Hoping that opponents would talk themselves out and then come around to support of the measure, the leaders let the debate continue. On March 19, Acting Chairman Crisp of the Committee on Ways and Means proposed that the House adjourn for a few days, suggesting that "it would do us all good to have an opportunity to cool off and think." Said Representative Rainey, the Democratic floor leader: "This House at the present time is a runaway House."

The pause, however, served merely to refresh the foes of the tax bill. They returned to the fray with renewed vigor, voted to increase the estate tax rates, and finally on March 24 struck from the revenue bill, by a vote of 223 to 153, the hated sales tax. To the sound of rebellious yells and cheering, the bipartisan *bloc*, led by LaGuardia and by Doughton of North Carolina, demonstrated how tenuous was the hold of the bipartisan leadership supporting the committee's bill. The appearance of this *bloc* created a situation in the House comparable to that in the Senate, where a group of insurgent Republicans has long rendered uncertain any program sponsored by the elected party leaders. In the House, the insurgents seemed to prefer the rôle of critics to the responsibility of leadership. They rejected with emphatic cries of "no" the offer of Crisp to surrender the task of framing the tax measure. With Democratic leadership gone for the time, Mr. Snell, after conferring with the President, took the view that the problem must be met by the Democrats. "The next move is up to them," he was quoted in the press as declaring. "They have been criticizing the way we have run the House for the past dozen years. Now this is their baby. I'm in favor of sitting back and waiting their next move." At a caucus held March 18, the House Republicans were reported so widely split that they agreed not to attempt a vote on whether to support the manufacturers' sales tax. Conditions seemed chaotic indeed.

At this juncture, his colleagues indicated clearly to Speaker Garner that they expected him to save the revenue bill. He had been criticized for not taking a definite stand with regard to the sales tax and for not defending directly the proposals of the Ways and Means Committee. The challenge was forthright, and was met by the Speaker in a direct and simple manner. Addressing the House quietly yet forcefully, he earnestly appealed for united action in passing the tax bill and requested all those willing to coöperate in balancing the budget to rise in their places. The members rising and applauding, he continued: "Now if you do not mind, those who do not want to balance the budget can rise in their seats." No one arose. Through this speech the Speaker, as subsequent events proved, regained some measure of control. The original surtax rates were replaced, although the 2.25 per cent sales tax stricken out by the Doughton amendment was not successfully reintroduced. On March 26, the work of the committee was threatened again, when efforts were made to introduce tariff amendments into the tax bill. Said Representative Blanton: "The Democratic party here is not composed merely of the majority leader and one or two gentlemen on the Ways and Means Committee. Every Democrat has equal rights, equal standing—he does his own thinking and votes his own judgment. He is not led like a sheep." The leaders literally pleaded that the tax bill be left free of tariff pro-

visions, and their wishes finally prevailed. The bill passed the House on April 1, and was reported on the floor of the Senate on May 9. Here the tariff problem arose again. Deaf to the pleas of the leaders for expeditious consideration, tariff log-rolling on oil, lumber, coal, and copper delayed action. By the end of May, the situation in the Senate recalled the chaos in the House two months earlier. With the revenue bill thus pending, the economy program also remained to be enacted before the budget could be balanced. It was then that President Hoover, believing an emergency demanding immediate action had developed, appeared before the Senate in person and called for the early completion of the fiscal program. The tax bill passed the Senate the same day, May 31, by a vote of 72 to 11; whereupon adjustment of differences through conference committee was undertaken. The Revenue Act of 1932 (H. R. 10236) in its final form was signed by the President on June 6.

Relief. The relief proposals which were recommended in the President's message of January 4 were advanced in the course of the session, but it was thought that the situation, which seemed to be growing worse, required more drastic measures. Senator LaFollette, for one, advocated more extensive and direct aid. Stating that \$2,160,000,000 had been provided for those owning securities and property, he pleaded in the Senate, on February 1, that relief to the hungry and destitute be provided. He urged that the federal government contribute funds to the local governments when their resources proved inadequate and introduced the LaFollette-Costigan bill (S. 3045) for aid to the unemployed. Senator Robinson of Arkansas, not to be outdone by the senator from Wisconsin, offered a substitute proposal doubling the original appropriation by including in the bill a provision to provide jobs by supplying millions to be spent for road-building without requiring the states to match the federal funds. Federal aid through a road-building program was seriously considered, and the amendment embodying such a plan, sponsored by Senators Walsh (Mont.), Bulkley, and Black, was not rejected until February 15, by a vote of 48 to 31. The original bill was defeated the next day by 48 (27 Democrats, 21 Republicans) to 35 (19 Democrats, 15 Republicans), 13 not voting. Apparently, agreement upon acceptable amendments was impossible. Moreover, objection was raised to the administrative features of the act, which, it was argued, centralized too much control in the federal authorities. It was likewise intimated that the measure did not have the approval of the President.

H. R. 8088, the companion bill of the LaFollette-Costigan bill, was reported favorably on February 19 by the House Committee on Labor. Of the original bill, only the enacting clause remained, the committee having rewritten the measure so as to provide for loans to the states to

be made upon application to the Secretary of the Treasury by the governor of the state. Repayment of these loans was guaranteed by allowing deduction from grants-in-aid that might be made under the Federal Highway Act. By the end of the month the Senate Committee on Manufactures reported favorably a measure (S. 3696) with provisions similar to this House bill. These committee reports were not acted upon. On February 27, however, under a special rule limiting debate to two hours and restricting amendment, H. R. 9642 was considered by the Committee of the Whole, reported back, and adopted by 205 to 109 (117 not voting). This bill provided about \$132,000,000 to be loaned to the states for road-building in order to give emergency unemployment relief. This whole problem of direct relief resulted in much debate, but in little concerted action. Of the several bills proposed, none was enacted at this time. There seemed to be a general opinion that the federal government should take action, but no agreement as to the form which should be applied. In his objection to appropriations for relief through highway construction, Senator Bingham pointed out that eighty per cent of the burden would fall upon ten states which would receive only thirty per cent of the funds. Much of the support seemed to come from the western senators.

With taxation absorbing the attention of the House in March, and with the economy program to the fore in April, it was only in May that the leaders turned to a direct consideration of emergency relief for destitution and unemployment. On May 12, in consultation at the White House with administrative officials and the majority and minority leaders of the Senate, the President discussed possible relief legislation with a view to expediting non-partisan action. Speaker Garner predicted the same day that Congress would consider unemployment relief before the session closed; one week later, he made public his plan. The Democratic caucus, meeting May 26, approved his project. His program called for the authorization of \$100,000,000 to be used by the President in relieving distress, \$1,000,000,000 to be added to the capital of the Reconstruction Finance Corporation for making loans to stimulate employment, and \$1,000,000,000 to be raised by a bond issue for the construction of public buildings, harbor improvements, etc. This proposal, embodied in H. R. 12353, was formally introduced by Majority Floor Leader Rainey on May 9. It occasioned perhaps the strongest statement which has emanated from the White House in a long time. "This is not unemployment relief," Mr. Hoover declared. "It is the most gigantic pork barrel ever proposed to the American Congress. It is an unexampled raid on the public treasury." The scheme for public works, the President suggested, was designed to win votes "back home." "It is apparently expected that the cupidity

of these towns and sections will demand that their congressmen and senators vote for this bill or threaten to penalize them if they fail to join in this squandering of money."

On June 7, by a roll-call vote of 215 ayes to 182 nays, the House passed H. R. 12445. A special rule giving the bill priority was adopted; debate was restricted to three hours; amendments were permitted only from the Committee on Ways and Means; and the bill, granting billions for destitution relief, was put through. The party was tightening its control. Representative Bankhead, ranking majority member of the Rules Committee, in calling up the special rule, admitted it to be "strong armed and drastic." Minority Floor Leader Snell, in opposing the rule, said: "This rule goes further in limiting and hog-tying members of the House than any I have ever seen." Why, he asked, did not the majority party bring in a strict rule for the consideration of the tax bill? The answer was not far to seek. The majority party apparently saw little political gain by asserting its power and assuming the onus of increasing taxes.

In the debate on the terms of the relief bill itself, echoes of the President's "pork barrel" denunciation recurred. It was pointed out that on June 6 the revenue bill designed to balance the budget was approved; now, on June 7, the balance was being disturbed by unwise expenditures. Opponents suggested as a substitute the Hawley bill (H. R. 12409) containing the President's proposals for relief which, it was claimed, did not endanger the budget. The partisan alignment was indicated by the minority report of the Committee on Ways and Means, which was unanimous in urging the Hawley measure.

If disagreement between the parties in the House was clear-cut, divergence between the House and Senate was quite as emphatic. The second chamber welcomed the bill by cutting out everything but the enacting clause and substituting the provisions of the so-called Wagner bill (S. 4755). Broadened by the addition of some of the nearly two-score amendments offered, the bill passed the Senate on June 23 without a record vote. Although both House and Senate measures as passed carried the same total, \$2,300,000,000, they differed as to the allocation of the funds and the manner in which these were to be raised. Prolonged cogitations on the part of the conference committee delayed action until July 5. At this point, the President intervened and invited the conferees to the White House. Learning that they were about to report provisions with which he was in disagreement, he thus attempted to forestall action. The Chief Executive explained that he would veto the measure unless changed in some of its provisions. Unable to come to terms, the conference was continued on July 6 while the House waited.

This unusual and very direct "interference" with the process of

legislation on the part of the Executive was thus commented upon by Speaker Garner: "It has not been customary since I have been a member of Congress for the President to summon members of both parties to discuss legislation, but when the President of the United States invites members of the House to the executive office for the purpose of discussing the welfare of the Union, I do not see how it is possible that we could refuse. However, I do not want to say that it is the best custom. And I do not think that it is quite in keeping with the Constitution or the thought of the makers of the Constitution as to the relation of the executive and legislative branches of the government for the President of the United States to wait until a conference report is completed, and has been signed by members of the conference, to secure a copy of it and before that conference report is filed in the House of Representatives, to summon them to the executive office for the purpose of telling them how to correct their work. It ought not to exist, and I on this floor protest against it."

The prolonged conference came to nothing, although Snell insisted that the issue was one, not between the President and Congress, but rather between the President and the Speaker. The House followed its leader in passing his bill on July 7 by a vote of 202 to 157. The Senate, on July 9, accepted the conference report by 43 to 31. The President responded with a strong veto message. "This proposal," he stated, "violates every sound principle of public finance and of government." Expressing his willingness to accept portions of the bill as in accord with his recommendations for relief presented to the Senate on May 31, he reiterated his staunch opposition to the broad authority granted the Reconstruction Finance Corporation to make loans. In his veto message, the Chief Executive wrote: "On the 31st of May, I addressed the Senate recommending further definite and large-scale measures to aid in relief of distress and unemployment. These proposals were made after discussion with leaders of both political parties in Congress, and in endeavor to secure united non-partisan action. My major objection to the measure as now formulated lies in the inclusion of an extraordinary extension of authority to the Reconstruction Finance Corporation to make loans to individuals, to trusts, estates, partnerships, corporations (public or quasi-public or private), to associations, joint-stock companies, etc."

No time was lost in debating the message. The Committee on Ways and Means formulated a new relief bill to accord with the specific recommendations made by the President. A special rule for the bill limiting debate to forty minutes was accepted, and on July 13 the bill was passed by 296 to 46. The two houses again disagreed in conference, the Senate finally giving way by acceding to the House's demand for publicity for

all loans made under the terms of the act. With the last deadlock thus broken, the measure went to the President as the session closed, and on July 21 the bill (H. R. 9642) was signed (Public No. 302).

In commenting on the completed measure, the President summarized its main features as follows: (1) provision of \$300,000,000 for temporary loans by the Reconstruction Finance Corporation in states unable to finance the relief of distress; (2) provision for \$1,500,000,000 for loans by the Corporation for reproductive construction work of public character, on terms assuring repayment, and expected to result in employment for hundreds of thousands; and (3) a broadening of the powers of the Reconstruction Finance Corporation as to the nature of the loans it may make in assisting agriculture, resulting in an improvement of the position of the farmer. "The obnoxious features which had been injected into the legislation from time to time by members of the House of Representatives, and had so long delayed action, have been eliminated. The \$100,000,000 charity feature has been abandoned. The pork-barrel infection that the loans to the states for relief of distress should be based upon population instead of need has been eliminated, and also the sum of \$1,300,000,000 non-productive public works ultimately payable by the taxpayer has been reduced to \$322,000,000, of which about \$120,000,000 are advances to the states for highways and most of the balance is not to be expended if the necessities of the federal treasury prevent it."

Injunctions in Labor Disputes. The Norris-LaGuardia bill (H. R. 5315), which passed the Senate on March 1 by a vote of 75 to 5 and the House on March 8 by a vote of 363 to 13, was signed by the President on March 23. This act (Public No. 65) forbids the issuance of injunctions in labor disputes without a full hearing and finding of fact, and then only when overt acts as set forth in the bill are committed. The right of labor to organize is recognized and the "yellow-dog" contract declared unlawful.

Foreign Affairs. Seventeen treaties, conventions, and protocols with foreign nations were approved by the Senate during the recent session as follows: treaties of friendship, commerce, and consular rights with Poland (signed June 15, 1931, ratified April 5, 1932) and Norway (signed Feb. 25, 1929, ratified April 5, 1932); a treaty of arbitration and conciliation with Switzerland (signed Feb. 16, 1931, ratified April 29, 1932); a slight change in the treaty with Italy of May 5, 1913 (signed Sept. 23, 1931, ratified June 18, 1932); extradition treaties with Greece (signed May 6, 1931, ratified Feb. 19, 1932) and Great Britain (signed Dec. 22, 1931, ratified Feb. 19, 1932); a treaty of establishment and sojourn with Turkey (signed Oct. 29, 1931, ratified May 3, 1932); a convention upon the limitation and regulation of drugs and narcotics (signed at Geneva

by the U.S. and 43 other nations, July 13, 1931, ratified with reservations March 31, 1932); a protocol relating to military obligations adopted at the Hague Conference for the Codification of International Law (signed April 12, 1930); a convention with Panama modifying the convention of June 6, 1924, relating to prevention of the smuggling of intoxicating liquors between the two countries (signed March 14, 1932, ratified June 18, 1932); a multilateral convention for the regulation of whaling (signed March 31, 1932, ratified June 10, 1932); a convention with France on double taxation (signed April 27, 1932, ratified June 15, 1932); a general inter-American arbitration treaty (signed by the U.S. and 20 American states Jan. 5, 1929, ratified with two reservations, Jan. 19, 1932); a convention on maritime neutrality (adopted at the Sixth International Conference of American states at Havana, Feb. 20, 1928, ratified with one reservation Jan. 28, 1932); a convention relating to consular agents (signed at the Havana Conference of American States, Feb. 20, 1928, ratified Jan. 22, 1932); an international convention relating to the treatment of prisoners of war (signed by the U.S. and 45 other nations at Geneva, July 27, 1929, ratified Jan. 7, 1932); and a similar convention on the condition of the sick and wounded in time of war (signed by the U.S. and 46 other nations, July 27, 1929, ratified Jan. 7, 1932). Protocols on the adherence of the United States to the Permanent Court of International Justice were submitted by the President, and reported favorably, but their consideration was postponed.

Committee Investigations. Hearings held and investigations made by several committees, while not resulting in further action during the session, served perhaps to prepare the groundwork for important moves at some later time. Among the projects that seem to promise something of significance are the hearings on the establishment of a national economic council, the inquiry concerning unemployment insurance, and the recommendations regarding the regulation of campaign expenditures.

A sub-committee of the Senate Committee on Manufactures of which Senator LaFollette is chairman conducted hearings from October 22, 1931, to December 19, 1931, on S. 6215 (71st Congress), a bill to establish an economic council for national planning. Many pages of testimony were heard; but though a bill (S. 2390) was introduced, the report of the committee was not brought formally to the attention of the Senate.

Pursuant to Senate Resolution 483, establishing a select committee to investigate unemployment insurance systems (71st Congress), Senator Hebert submitted a report (S. Rept. 964) on June 30, 1932. As the minority member of the committee, Senator Wagner submitted his individual views (S. Rept. 629) on May 2. He is reported to favor general compulsory insurance, although the other members of the committee op-

pose federal participation to any extent beyond permitting tax exemption for funds set up by industry for unemployment insurance.

On December 21, Senator Nye submitted a report (No. 20) from the Select Committee on Senatorial Campaign Expenditures pursuant to Senate Resolution 215 of the preceding Congress. This committee, after conducting an investigation extending into eighteen states and publicly examining 408 witnesses, drew up a report pointing out the defects in the existing law, i.e., the Corrupt Practices Act of 1925. A bill (S. 2316) based upon a draft prepared by Professor James K. Pollock was referred to the Committee on the Judiciary. The bill provides for a joint committee on elections, composed of five members from the House and five from the Senate, to receive the reports and other data required to be submitted, and likewise requires all candidates for election to federal office to have an authorized agent to supervise campaign contributions. The purpose of the bill is primarily to fix responsibility for expenditures and to require the filing of accurate and complete reports.¹⁰

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¹⁰ The official résumé of the work of the session, as reported in the final calendar of the House of Representatives, is in parts as follows:

The 962 bills and resolutions which became law classify as follows: 598 House bills, 28 House joint resolutions, 321 Senate bills, and 15 Senate joint resolutions.

Of the 166 Senate bills and 15 Senate joint resolutions which became law, 82 bills and 4 joint resolutions were enacted in lieu of an equal number of House bills and House joint resolutions, respectively, which had been reported from committees and were laid on the table to facilitate the enactment of the legislation.

Exclusive of bills vetoed and the proposed amendment to the Constitution, the House passed 216 House bills (including two omnibus pension bills containing 1,488 bills; a total of 1,702 bills) and four House joint resolutions, and one Senate bill which did not become law.

There were introduced in the Senate 4,986 bills, 210 joint resolutions, 35 concurrent resolutions, and 281 simple resolutions. The Senate passed 525 Senate bills and 47 Senate joint resolutions. The Senate committees made 1,002 reports.

Exclusive of bills vetoed and the proposed amendment to the Constitution, the Senate passed 355 Senate bills and 31 Senate joint resolutions which did not become law. Of these, one bill was indefinitely postponed in the House; 123 Senate bills and 5 Senate joint resolutions are pending on House calendars; and 170 Senate bills and 20 Senate joint resolutions are pending in House committees. One Senate joint resolution was recommitted to committee in the House.

PUBLIC ADMINISTRATION AND ADMINISTRATIVE LAW

Effects of the Growth of Administrative Law upon Traditional Anglo-American Legal Theories and Practices. The development of Anglo-American law has been greatly influenced by certain theories and doctrines which have directed and conditioned the evolution of administrative law. Foremost among these are the political and legal theory of the separation of governmental powers and a juridical doctrine relating to the nature and scope of law itself. Briefly, the theory of the separation of powers, which is commonly announced as a fundamental principle of American constitutional law, and is implicit in some phases of English law, is to the effect that laws are made by the legislature, executed by the executive, and interpreted and applied by the courts. As a correlative of this doctrine, it is understood as essential that none of these departments may delegate powers which properly belong to it to either of the other departments, in order that, as the Massachusetts constitution expresses it, "there shall be a government of laws and not of men."

The juridical doctrine referred to is one which has profoundly affected legal thinking in all Anglo-American jurisdictions. According to it, that is law which is juridically permissible; or, as it is commonly expressed, law is comprised of those rules which are accepted and applied by the courts. In the language of such eminent interpreters of legal thought as Justice Holmes and Judge Salmond, law is a prediction of what the courts or judges will do when a controversy arises. So far as Anglo-American law is concerned, the theory of the separation of powers, which is typically American, and the juridical doctrine as to the nature of law, along with the practical adjustments which resulted therefrom, were formulated before administrative law had developed sufficiently to affect legal theories and practices to any appreciable degree.

With the increase in the functions of government, and with the extension of administration into the fields of social and economic life, the establishment of boards, commissions, and commissioners to carry out the duties either of the legislature or of the executive ran counter to the strict distribution of governmental powers as deemed necessary by the principle of separation of powers formulated or implied as a constitutional principle. Hence the delegation of subordinate legislative functions and the transfer of their administration to executive boards and commissions specially established for the purpose either were checked and rendered impotent for the time being or were forced to function in a round-about manner so as to avoid the strict division of powers supposed to be enshrined in the constitutional principle of separation. But the legislative departments and the executive officers, in carrying out their func-

tions, found it necessary to delegate more and more authority to administrative officers, and the theory of the separation of powers has had to be interpreted gradually so as to permit a combination of powers and functions deemed impossible under a strict interpretation of the separation theory. Contrary to the insistence of many legal writers and judges that the principles of Anglo-American law were opposed to the growth of administrative law, it has found a secure place in these systems.

Just as the theory of the separation of powers proved inadequate and inapplicable to the new and complex conditions which developed in the latter part of the nineteenth century, so the juridical doctrine that law is only that which the courts interpret and apply as such has proved to be unsuited and impractical in the developments which have come within the last few decades. Relatively new social and economic conditions have required a revision of the doctrines and ideas underlying the interpretation and application of law. A fundamental dictum which is associated with the juridical doctrine is that the people make their laws through elected representatives and independent judges administer them. But do judges actually administer law? Can the negative attitude by which the courts wait until controversies arise and then are brought to the courts for adjustment be considered as a satisfactory method of law administration? The ideal of the judges operating under the juridical doctrine is that a body of systematized and well coördinated case law is available for the determination of controversies as they arise. But the manifold activities and interests which have accompanied the growth of population and the development of large urban centers, with their increasing complications and complexities, result in frequent difficulties and controversies for which no adequate solution is available through the formulated system of case law. In short, neither the old and consecrated doctrine of the separation of powers nor the juridical doctrine that law is comprised of the rules applied by the judges is suitable to control and to circumscribe the development of law under the conditions now prevailing.

Certain potent facts in modern political practice render apparent the inadequacy of the old theories and doctrines. In the first place, among the chief law-making agencies in both England and the United States, as well as in Continental European countries, are administrative officers, boards, and commissions. About five times the quantity of legislation enacted by the English Parliament, it is claimed, is issued in the form of delegated legislation through executive departments, boards, and commissions authorized to participate in legislative activities; and the published rules and regulations by no means include all of the rules which administrative officers formulate and apply in performing the functions entrusted to them. There is a growing quantity of delegated legislation

in the United States. To what extent this delegated legislation exceeds the amount of legislation now issuing from legislative bodies cannot be determined, but in view of the numerous officers, boards, and commissions authorized to make administrative orders, rules, and regulations, it is obvious that in the United States the amount of such delegated legislation greatly exceeds the prolific activities of federal and state assemblies. Moreover, it is apparent that in the establishment and extension of the authority of administrative officers, all of the powers of government, legislative, executive, and judicial, are not infrequently combined. In other words, the doctrine of the separation of powers embodied in constitutions manifestly has not interfered seriously, or for a long time, in the general movement to establish administrative authorities with legislative, executive, and judicial powers.

The most significant fact connected with this development has been the tendency to place final and conclusive authority in the hands of administrative officers, and thereby to exclude from the control of the judiciary a continually widening field of governmental authority. One may argue that in this development the orders, rules, and regulations, and the administrative decisions rendered therewith which have, to all intents and purposes, the effect of law, as far as the relations of the citizens are concerned, are not really laws. But, as Mr. Robson observes for England, it is scarcely possible to exclude this extensive field of effective regulations from the domain of law, if the term is to have any practical significance in modern life. The result, then, is that in the field of administration the separation of powers has apparently little application, and that law is made on an extensive scale, not as formerly deemed necessary by courts and judges, but by administrative officers who are granted the authority to make, interpret, and apply regulations which have the force of law.

An example of such administrative powers, quite common in the efforts to regulate industrial conditions, is found in the legislative provision in a workmen's compensation act that the employer shall furnish *a safe working place* for his employees, a violation of which is rendered punishable by fine or imprisonment. The authority to make general or special orders prescribing *standards of safety* in particular employments is confided to the commission established by the act. Through consultation and coöperation with the industries affected, safety orders are made and promulgated. Commission inspectors check whether the orders are obeyed and institute criminal proceedings when employers refuse to install the necessary appliances to carry out the requirements of the order. Courts participate in the process only when representatives of the commission and the employers cannot adjust their differences so far as the adminis-

tration of the order is concerned. In practice, few criminal prosecutions are necessary, since such safety orders are quite generally enforced through administrative proceedings.

An early approval of broad administrative powers is found in the first statutes providing for the commissioner of the General Land Office in the United States. From the beginning, the commissioner was authorized to give instructions as to the proper construction of the land laws. Such instructions were not always deemed binding, but they established the executive construction of the acts which the courts frequently followed. In the disposal of controversies which have arisen under the land laws, an unusual degree of concentration of authority has been approved. The commissioner, in one of his annual reports, notes that when an issue arises it is his duty to prepare the charge on which an action is based, his agents collect the evidence and present it at a hearing which he orders, and "officers subordinate and answerable to him preside at the trial, find the facts, and declare the law." In the hearing of such cases, the department is governed very largely by its own rules, regulations, and unwritten customs. The department, it is claimed, is much more consciously making law by its decisions than are the courts. "A large part of its work," according to Mr. McClintock, "is the preparation of rules and regulations which manifestly are laws, and naturally the principles stated in its decisions, prepared in the same office and largely by the same men, and printed in the same reports, come to be regarded as part of the legislative work of the department."¹ It is Mr. McClintock's judgment that the department has succeeded in providing speedy and cheap settlement of controversies in a large number of cases while preserving to a large degree the safeguards of administration by courts of law.

II

So significant have been the facts referred to that criticism is rife regarding what is termed by the Lord Chief Justice of England "administrative lawlessness,"² and by an Oxford scholar, "bureaucracy triumphant."³ Eminent authorities in England and in the United States have joined in the criticisms of the trend toward government by commissions or administrative officers. There has been a widely expressed fear that the modern tendencies in administrative law are resulting in confusion in the meaning and application of the legal conception of the sovereignty of the state. These critics have deplored the fact that the

¹ Henry L. McClintock, "The Administrative Determination of Land Controversies," 9 *Minn. Law Rev.* (Apr., 1925), 420, 641.

² Lord Hewart, *The New Despotism* (London, 1929).

³ Carleton Kemp Allen, *Bureaucracy Triumphant* (London, 1931).

extraordinary growth of administrative legislation and execution are profoundly changing the two concepts on which the English system of law is presumed to be based, namely, the sovereignty of Parliament and the rule of law. We are building, in the opinion of these critics, an administrative despotism on the ruins of both of these concepts. It appears to be all the more alarming to the opponents of the growth of administrative law that the prevailing method followed is to use the sovereignty of Parliament to enthrone administrative officers and oust the jurisdiction of the courts.

The critics are prone to compare judicial procedure with administrative procedure, and to contrast the administrative mind with the judicial mind. To the latter, it is claimed, justice depends upon hearing, evidence, cross examination, and a judgment presumed to follow known rules or principles. Legal discretion, as they see it, distinguished from administrative discretion, is informed by tradition, methodized by analogy, disciplined by system, and subordinated to the necessity of order in the social life. As over against these characteristics of the judicial attitude, it is pointed out that no one can fail to be impressed by the volume of evidence of a growing arbitrariness of temper on the part of government departments which contradicts elementary principles of justice. Many agree with Federal Judge Hutcheson, who criticized the administrative proceedings in a deportation case in which one man acted as inquisitor, interpreter, prosecutor, and judge, as a hearing "stripped of the conditions which make for justice."

The essentials of court procedure, such as the insistence on first-hand evidence, appearance of witnesses in person, necessity of proving formally every document and every fact in issue, with pleadings formulated in technical language, and the employment of counsel, are deemed prerequisites for much of the procedure which now is carried out informally and summarily by administrative officers. There appears at times to be an assumption that every tribunal which does not form a part of the recognized system of courts necessarily acts in an arbitrary and incompetent manner, and in such a way as to be injurious to the citizen. The very essence of legal procedure as comprised in the tendencies toward uniformity, equality, and certainty is deemed to be lacking in the administrative procedure which is growing more common among the commissions and officers set up to administer many of the laws enacted by our legislatures.

III

Despite these insistent, and at times trenchant, criticisms of administrative practice and procedure, why has there been such an amazing growth of administrative justice within the last few decades? The reasons are

fairly obvious to anyone who analyzes recent tendencies in governmental developments. In the first place, the attributes of a good legal system are presumed to be incorruptible and impartial judges administering law accurately and founded on recognized principles, with judgments rendered quickly and justice accessible to citizens cheaply. The courts have met to a reasonable degree the requirements of impartial judges and of administering law upon fairly well established legal principles. They have failed to meet the insistent demands that justice be rendered quickly and be made available to the citizens cheaply. In order to secure quick and cheap justice, various administrative bodies, such as industrial accident boards or workmen's compensation commissions, public utility commissions, boards of tax appeals, and boards of arbitration for various purposes, have been established to supplement the ordinary and more elaborate forms and practices of judicial procedure.

A second factor which has affected the growth of administrative justice is the increasing complexity of social phenomena, controversies concerning which can be dealt with only rather clumsily and with unusual delay through the ordinary courts. A Royal Sanitary Commission reporting in England in 1871 relative to the administrative control of boards of health in sanitary matters called attention to the impossibility of securing satisfactory remedies through ordinary legal procedure. The Commission contended that the legal process is too long and dilatory, and that the case, when brought to issue, is of such a nature that a court of law is unfitted to try it. Details of sewers and sewage, quantity and quality of water supply, capacity of works to be constructed, the mode in which refuse is removed—these and similar questions are constantly arising for consideration and decision. A mere statement of them, in relation to the intricate facts involved, indicates that they cannot with any satisfactory result be dealt with effectively by courts of justice.

Common law judges, according to Lord Sumner, are "ill-equipped to weigh the merits of one solution of a practical question against another." The development of social control of education, medicine, sanitary engineering, thermodynamics, and other subjects frequently highly technical, raises matters of standards and technique which are to a large degree beyond the range of the abilities and competence of lawyers and judges, unless they have had opportunities to specialize in the field concerned. The difficulties along this line have been faced frankly at times when judges have pointed out their inability and relative unfitness to handle satisfactorily the complicated problems which arise in such a field as the regulation of railroads. The sheer extent and complexity of the field of public utility regulation has rendered it necessary to establish such commissions as the Interstate Commerce Commission, state public utility commissions, and separate railway boards.

The supreme court of Wisconsin referred to the public utility commission as "composed of experts in their field, who are equipped, by reason of their office, their experience, and the nature of their work, with special qualifications to perform the administrative duties devolved upon them by statute. They also possess facilities enhancing their ability to properly perform them which are not ordinarily possessed by individuals or even the courts."⁴ Those who spend all of their time in the analysis of the problems that arise in utility regulation can only with great care and trepidation analyze and weigh the involved relations and factors which arise in such a matter as a rate controversy. In the number of cases and their significance in relation to the community, these utility boards or public utility commissions are called upon to do a type and quality of work often of greater consequence than the issues which normally arise in courts of justice. A recent commentator observes:

"The sweep of the jurisdiction thus confided to the Interstate Commerce Commission is seldom realized. The monetary stake is frequently tremendous. In the 1920 rate case, the advances sought and authorized by the Commission were estimated to amount to more than \$1,000,000,000 per annum. The reductions in the rate case of 1922 were estimated to amount to several hundred millions per annum. In the Pullman surcharge investigation, the amount at stake was approximately \$35,000,000 to \$40,000,000 per annum; and the amount involved in the Interchangeable Mileage Ticket case approximately \$20,000,000 to \$30,000,000 per annum. These proceedings are cited merely by way of illustration, though the first two cases were, of course, exceptional. Ordinary court litigation is a mere bagatelle in point of monetary stake as compared with proceedings before the Commission, particularly when it is remembered that action by the Commission in rate cases continues to have its effect from year to year."

A third reason for the development of administrative justice has arisen as a result of the extension of governmental functions in the effort to control economic and social conditions. It is in this control that there has been turned over to various officers and boards the task of establishing new standards along lines wherein courts of justice would have been unable to function effectively. In the transportation field, boards or commissions have been charged with the duty of insuring adequate service, preventing undue preference and prejudice, and assuring a reasonable return on investments. The formation of new standards in such unexplored fields has required something more than technical knowledge. To determine what constituted reasonable service for a public utility re-

⁴ *Commonwealth Tel. Co. v. Carley*, 192 Wis. 464.

⁵ Henry W. Biklé, "Justice Brandeis and the Regulation of Railroads," 45 *Harv. Law Rev.* (Nov., 1931), 12.

quired not only a knowledge of some of the rules and policies formulated over a long term of years by the legislatures and courts, but also special familiarity with the conditions and responsibilities of a public service corporation operating in the midst of an economic, social, and industrial environment of which common law judges had little cognizance. A greater reliance upon standards and less reliance on rules is an inevitable result when the emphasis changes from the preservation of property and contracts, with the consequent enforcement of individual rights, to a condition in which concepts of administration of services in the public interest dominate certain phases of economic life. The formulation of standards becomes a matter of primary concern when social policies are adopted for the promotion of the public health, the improvement of housing facilities, and the mitigation of the conditions of poverty and unemployment.

In short, it is recognized more fully today that statutes acquire meaning and precision from the sense and experience of the men who apply them, and it is for this reason that it is urged that greater weight be given to "the judgment of a tribunal appointed by law and informed by experience." In administrative decisions, more significance is likely to be given to imponderables. Administrative officers are perhaps more disposed than judges to express, in the words of Mr. Justice Holmes, "an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions—impressions which may lie beneath consciousness without losing their worth." It is in certain fields such as the juvenile courts and various specialized tribunals that the intuition of the administrator, if given a reasonable opportunity, is likely to arrive at more effective and more reasonable results than the formal procedure of courts of justice permit. Both the increasing complexity of phenomena to which reference has been made and the growing tendency for the government to regulate social and economic conditions render it particularly important that administrative officers or boards develop new standards and work out the various interrelations that result from their application.

A fourth factor which has influenced the development of administrative justice is inherent in the very organization and procedure of a legal system. The legal approach to problems is necessarily static, unprogressive, *laissez faire*. A court can intervene only when a conflict or controversy arises. It can move in the direction of the adjustment of the controversy, and its function then ends. The difficulties that may arise from the decision, the complications that follow, and the interrelations involved, are beyond the scope of the court's jurisdiction or action except in so far as subsequent controversies arise for determination. And

it is a notorious fact that legal controversies arise, are fostered, and are prosecuted through the courts in the atmosphere and spirit of a litigious fringe of any social group. The great majority of the group manage to adjust their differences or suffer serious losses or inconveniences rather than turn to the courts for relief.

A changing society demands to a greater degree a progressive attitude and an adaptation of policies to meet different conditions. Administrators are not bound by precedent, and they are not confined to negative action. It is part of their duty and function to formulate policies, to develop administrative techniques, and to work out new methods of adjusting controversies, to check and modify their standards in the ordinary frictions and difficulties of everyday life, and to adjust their decisions and attitudes accordingly.⁶ The administrator introduces a degree of flexibility in removing conditions which foster controversies and in coöperating with the parties concerned to settle controversies when they arise. In other words, along numerous lines constructive planning and social engineering are absolute necessities if modern society is to be able to live in peace, health, and even moderately workable social adjustments. Through administrative procedure alone are such planning and engineering practicable.

Finally, and in a sense summing up the preceding reasons for the growth of administrative justice, it is the increasing specialization of modern life that has rendered imperative a growth of the administration of government according to new standards and new techniques. Under these circumstances, administrative officers giving their time and attention to the special problems that arise in a limited field not only become specialists in the field, but gain a familiarity with the needs and difficulties of those for whom the laws and regulations are designed, so that they can develop governmental policies and doctrines which bring a maximum of advantage to the individuals concerned with a minimum of expense, delay, and friction in securing prompt and necessary action.

IV

But the growth of administrative justice in legal systems ill-adapted to the necessary procedure and technique involved has raised objections

⁶ A typical industrial accident law provides that from the date of an injury, upon notice and after opportunity to be heard, the commission may rescind, alter, or amend an order, decision, or award made by it upon good cause. The commission also has the right "to review, grant, or regrant, diminish, increase, or terminate within the limits prescribed any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either recurred, increased, decreased, or terminated." Such review is usually confined to cases in which new facts have arisen.

to the essential features of this type of justice. Criticisms have been directed chiefly against the device of subordinate or delegated legislation, the discretionary action or quasi-judicial determination of disputes, and the failure to recognize and follow the standard methods in making and interpreting law. It has become the custom to condemn legislative bodies for their failure to perform their necessary and so-called legitimate functions, and for the ready and easy manner by which they have delegated their duties and responsibilities to subordinate legislative and executive tribunals. A noted English historian laments that "many modern statutes are mere *cadres* giving no adequate indication of their ultimate scope. They lay down general rules and leave it to the departments concerned to give substance to the legislative skeleton by the issue of administrative orders." In most instances of this kind, it is contended, Parliament maintains a merely formal control which has little practical consequence. Lord Chief Justice Hewart argues that the ordinary reasons offered for an extension of delegated legislation, such as urgent action to meet a national emergency, the pressure of time upon the House of Commons rendering it impractical to become familiar with the multitude of details involved in an effort to make statutes complete in all particulars, the inability of members of Parliament to become familiar with the technical details necessary to a complete legislative program, and the need of greater flexibility in the rules governing social relationship so as to permit the carrying out of experiments, are nothing else than "a well-thought-out plan, the object and the effect of which are to clothe the department with despotic powers."

Regardless of such criticisms, subordinate or delegated legislation has become a necessity. Legislative bodies, in spite of any intentions to the contrary, cannot confine their attention to anything else than the substantial provisions of acts, and they are compelled to leave the details to be settled departmentally. Even if legislators have the ability and aptitude to deal with the many technical matters which must be determined before a legislative policy or program can be formulated, or if they can command for their purposes the best of advice, the real details which give life and vigor to a law cannot be phrased in its actual implications in the statute or the code. Administrators must breathe into it the breath of life. Moreover, legislatures meet intermittently, while governments must go on and, if need be, emergencies must be met. Delegated legislation permits experiments to be carried out in a way that would be impossible by means of the slow methods of parliamentary enactments. "No one who looks at a collection of the annual output of delegated legislation," says Mr. Carr, "can seriously propose that Parliament should now cancel the concession of legislative power and should undertake for the

future under its own direct authority all the legislative authorities which at present are left to His Majesty in Council or to the various public departments.'"

The chief problem today is not how to prevent or check rule-making and government by department leaders, but how to devise effective and adequate supervision. It is obvious that there must be limits to the extent to which delegated legislation can supersede or supplement the work of the "sovereign" assembly. But what these limits should be is very difficult to determine. The conditions under which regulations may be made by an administrative officer may be defined in detail, and the courts may review the process under the doctrine of *ultra vires*. If such review is prevented, the legislative assembly alone can check extreme arbitrariness or officiousness. The situation today is well summed up by Elihu Root in the comment:

"The old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the fight. There will be no withdrawal from these experiments. We shall go on; we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to rights and obstacles to wrong-doing which, under our new social and industrial conditions, cannot be practically accomplished by the old and simple procedure of legislatures and courts as in the last generation."

With the multiplicity of duties and functions of administrative officers, and growing difficulties in exercising any effective control either by the legislatures or the courts, it becomes imperative to develop a spirit of professionalism among the administrators themselves, and to provide machinery and develop standards by which they control and discipline themselves. Perhaps the ultimate outcome must be a series of administrative boards of review or courts, with an appeal to a supreme administrative tribunal, somewhat similar to the French Council of State.

Even more insistent objections than those hitherto raised against the tendency to rely on the practice of delegated legislation are directed against the discretionary and quasi-judicial determinations of administrative officers. Investing administrators with discretionary authority affecting the private rights of the citizen is common in assessing and collecting taxes, in declaring and abating nuisances for sanitary and health purposes, in the enforcement of immigration and deportation proceedings, and to a limited degree in most statutes designed to regulate the licensing of a business or a profession. Sometimes such discretionary authority is deemed an incident to the authority to remove public officers. To an enhanced degree, legislative acts lay down policies of safety, fair-

' *Delegated Legislation* (Cambridge, 1921), 21.

ness, or reasonableness for types of human conduct, and administrative officers are accorded a considerable latitude of discretion in determining permissible lines of conduct in accordance with predetermined standards.

A large part of administrative law in the United States concerns the gradual process of overcoming the objections of judges who conceived the separation of powers doctrine in a narrow and formal spirit and placed obstacles in the way either of delegating administrative powers or of investing executive agents with discretionary authority. The granting of such authority—judicial, or quasi-judicial, as it is often called—so as not to come within the scope of the theory of the separation of powers, was deemed frequently to invade the function of the judiciary, and until rather recent times courts looked askance at such a seeming violation of the separation theory.

V

One of the most disturbing tendencies in administrative law, to those who are partial to the rule of law and its implications, is the feature of recent statutes which prevents recourse to the courts to review alleged arbitrary action. This practice is not entirely new, for as early as 1885 Congress passed a law authorizing payment, after examination by the accounting officers of the Treasury, of claims for property belonging to officers and enlisted men and lost or destroyed in the military service.⁸ According to a proviso of the act, "any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened and considered." Such a proviso, Justice Brandeis held, expresses clearly "the intention to confer upon the Treasury Department exclusive jurisdiction and to make its decision final."⁹ In England, this tendency is indicated in the enactment of statutes which exclude the doctrine of *ultra vires* by means of a provision that "rules made under this act shall have the same effect as if enacted in this act." This provision has been held to preclude the courts from scrutinizing administrative orders.

Extreme instances of administrative finality may be cited, such as the workmen's compensation act of Ontario whereby the action or decision of the board shall be final and conclusive, and shall not be open to question or review in any court, and no proceedings by the board may be restrained by injunction, prohibition, or other process in any court, or be removable by certiorari or otherwise into any court. Thousands of cases are determined in a single year under this act, and the parties must accept the administrative decisions as final. Similarly, English acts defining the authority of the Ministry of Labor under the Unemploy-

⁸ 23 Stat. C. 335.

⁹ *United States v. Babcock*, 250 U. S. 328 (1918).

ment Insurance Plan established an elaborate system of tribunals charged with the statutory task of determining intricate questions of fact and points of law. The decisions of the officers of the department are declared final, and no appeal is permitted to the courts. It was this type of act which led Mr. Justice Darling to protest that the section in question "gave an order made by a public department the absolute finality and effect of an act of Parliament. . . . Here there was a public department put in a position of absolute supremacy . . . and they could only say that Parliament had enacted only last year that the Board of Agriculture in acting as they did should be no more impeachable than Parliament itself."¹⁰

In the United States, a recent Oregon statute reorganizing the system for the regulation of public utilities prescribed that the commissioner of public utilities shall be appointed by the governor, and may be removed by him "for any cause deemed by him sufficient," and the clause is added that "such power of removal shall be absolute, and there shall be no right of review of the same in any court whatsoever."¹¹

The chief purpose of Continental administrative law is "to set bounds to bureaucratic action." Whereas in France and Germany there is a tendency to extend the control of the courts over the administration, in England and in the United States one of the main objects has been to remove administrative action from the control of the courts. An example illustrates the recent tendency in England. A department attempted by a regulation to prevent a subject from taking proceedings before a court of law to recover the possession of his premises and endeavored by the same regulation to make the mere act of taking such proceedings a penal offense.¹²

It is the extension of the principle of administrative finality, with prevention of the opportunity to appeal to the courts or to follow the procedure of judicial justice, that appears most alarming; though it is rather the principle of finality than actual instances of arbitrariness or injustice that seems to have called forth the severest strictures.

VI

Whether one may be friendly toward administrative practices and procedure and may deem advantageous the mode of justice which results

¹⁰ *Ex parte Ringer*, 2 S.L.L.R. 718, 126 L.T.R., 116. According to the Small Holdings Act, 1908, 39(3), orders "when confirmed shall become final and have effect as if enacted in this act; and the confirmation shall be conclusive evidence that the requirements of this act have been complied with and that the order has been duly made and is within the powers of this act."

¹¹ *Laws*, 1931, Chap. 103, secs. 61-102.

¹² *Chester v. Bateson* (1920), 1 K.B., 829.

from such procedure, or may be disposed to condemn so-called "administrative justice," it is apparent that the main features of administrative law, either of the Continental or of the Anglo-American type, must be deemed as more than a passing characteristic of modern legal systems. And it is well to consider what are some of the effects, particularly on Anglo-American traditional legal concepts, of the new administrative justice.

In the first place, a definition of law which excludes the rules, regulations, and decisions of administrative officers is in need of revision. Administrative rules and regulations have for a long time had a sort of back-door admittance to the concept of the law. When such officers "fill up the details of the statute," or make public regulations "interpreting the statute and directing the details of its execution," such traditionalists as Chief Justice Taft approved the process and gave their sanction to these rules because they were deemed to be carrying out the intention of the legislature. But unless we can delude ourselves by a series of legal fictions, such an explanation does not account for the most significant functions of administrative officers. And some realistic interpreters of legal phenomena are willing to find a legitimate place in a legal system for administrative law. Professor Llewellyn believes that "more often than not administrative action is, to the layman affected, the last expression of the law on the case. In such a situation, I think it highly useful to regard it as the law on the case."¹³

But those who are inclined to follow the modified Austinian approach to the definition of law think that the term "law" cannot be so broadened without losing its real significance.¹⁴ Is the preservation of the sacred precincts of the law as Austinians conceive it the really important desideratum? Rather, may we not think of law as an ever-widening concept in which equity, originally outside of its confines, is admitted, and administrative justice, originally outside of its scope, may now be deemed as having gained a reputable status of admission into the realm?

Modern theory and practice are inclined to regard as law rules applied in a definite and systematic manner by umpires, by arbitrators, as well as by quasi-judicial administrators.¹⁵ The decisions of umpires and arbitrators may be purely individual or personal, as indeed judicial judgments may be; or they may be according to customary ways of judging human conduct, and may follow well known criteria for analyzing

¹³ Karl N. Llewellyn, "A Realistic Jurisprudence," 30 *Col. L. Rev.*, 431, 455.

¹⁴ See John Dickinson, "Legal Rules: Their Function in the Process of Decision," 79 *Univ. of Pa. Law Rev.* (May and June, 1931), 835.

¹⁵ See especially Kantorowicz and Patterson, "Legal Science: A Summary of its Methodology," 28 *Columbia Law Rev.* (June, 1928), 679 ff.

the evidence and issues of a controversy. Why may not the latter mode of procedure be included within the realm of law?¹⁶

In England, extensive use of arbitration is made in administrative procedure under the common law, under the Arbitration Act of 1889, and under special statutory provisions relating to the housing of the working classes, to workmen's compensation, and to public health. The whole process is under the supervision of the courts, and the awards are enforceable by judicial procedure. For many cases an arbitrator is appointed for the special controversy. Sometimes an attempt is made to get a speedy and summary reference to a tribunal having practical knowledge of the subject, as in the provision for a railway rates tribunal consisting of a business man, a railway expert, and a lawyer. Even the general conviction of the necessity of sanctions to make administrative law effective is undergoing change. The English Industrial Court, established in 1919 to adjudicate controversies between employers and employees, was granted no power to enforce its awards. Yet its awards have invariably been put into effect, and the court is "building up a definite body of economic jurisprudence which is applied effectively without any external sanctions."

That much of the procedure and practice of these administrative bodies may be regarded as coming within the range of law is a conviction that is growing among authorities who have become cognizant of the prevailing tendencies. Thus Mr. Robson observes: "If we would keep to a true view of the judicial function, we must include within its ambit the activities of all those persons other than judges who have at one time or another to decide controversies, great or small, even where no legally enforceable right is concerned. Everyone must to some extent feel himself to be a judge when his decision is sought by two friends in momentary dispute, whether they be a couple of business men who have fallen out about a contract or a boy and girl quarreling over a toy. The question whether the rights in issue are legal rights or moral rights or natural rights (if such exist!) is immaterial. There are more judges under high heavens than those who sit in courts. On this view, then, we can conceive a *lis inter partes* existing whenever a person finds himself called upon to decide a controversy between others, whether he is an administrative official, or a business man, or a peacemaker among friends."¹⁷

A great deal of the administrative justice of the future is likely to be concerned with the settlement of disputes in which the enforcement of the

¹⁶ On the tendency of arbitrators to regard themselves as controlled by law, rather than to be guided by personal considerations, see Jackson H. Ralston, *International Arbitration from Athens to Locarno* (Stanford Press, 1929).

¹⁷ *Justice and Administrative Law* (London, 1928), 72, 73.

decision will depend more on its voluntary acceptance by the parties than on effective penal sanctions exerted by the police. This is particularly the case in controversies within the economic sphere, where anything in the nature of specific enforcement imposed by coercion is often impossible. Thus it will be found that, on the ground which lies midway between formal litigation on the one hand and arbitration by agreement on the other, some effort to obtain voluntary submission to the findings of the tribunal must frequently be sought; and where this is the case, the inclusion of representative members on the tribunal is desirable. The success of the English Railway Wages Board, which is a purely advisory body without direct powers of enforcement, is essentially dependent on the appointment of representatives of the trade unions and the railway companies as members of the board. The remarkable growth in scope and power of the work of the Industrial Court, which is also based on the principle of voluntary acceptance, or self-enforcement of the award, is full of significance in this connection. For the Industrial Court is composed of representative membership under a neutral chairman.¹⁸

Justice Rosenberry says of the authority of the commissioner of insurance in Wisconsin: "The change is fundamental because the law, at least in some of its aspects, no longer emanates from the legislature, is no longer wholly declared and enforced by the courts; and to the extent that this is true, we have departed from the fundamental principles upon which our political institutions rest. . . . The regulation made by the administrative officers answers every definition of law. The regulation prescribes a rule of future conduct, compliance with which may be enforced in a court of law. . . . It only leads to confusion and error to say that the power to fill up the details and promulgate rules and regulations is not legislative power."

In fact-finding powers, most administrative agencies follow substantially the procedure of courts. A refusal to recognize the facts as they exist, and to give administrative law its rightful place in our legal theory, in Justice Rosenberry's opinion, has prevented a logical and symmetrical development of the law.¹⁹

It is not difficult to see in the modern administrator who makes the law which he enforces, and acts as a judge in a preliminary way when cases arising under it are adjudicated, a replica of the praetor, an officer who made a distinct and lasting contribution to Roman jurisprudence. Among the praetor's manifold duties and responsibilities, he was authorized, first, to deny to a person having a legal right his proper remedy

¹⁸ Robson, *op. cit.*, 298.

¹⁹ State ex rel. Wis. Inspection Bureau v. Whitman, 196 Wis. 472 (1923).

(that is, he could recognize what in modern terminology would be called equitable defenses); second, he could give old actions to persons having no legal rights, or introduce entirely new actions; and, third, he sat as a judge to investigate and determine disputes.

The sources of his wide powers were the *jurisdictio* and *imperium*. The former gave him permission to determine whether a case should be brought into court. For the hearing of a case, he appointed an arbitrator, defined the law under which the umpire conducted the hearing, and later gave effect to the arbitrator's decisions, the latter giving him legislative, as distinct from administrative, authority. It has been said of him: "His right to alter the law was openly acknowledged, but it was not unlimited. He was surrounded by a firm, though invisible and somewhat elastic, band. He was checked by public opinion, and by the probability of having to answer for his conduct on demitting office. He may be viewed as the keeper of the conscience of the Roman people, as the person that was to determine in what cases strict law was to give way to natural justice."²⁰

The praetor was not hampered by a fine-spun theory of the separation of powers. He could make and apply law to meet the needs of the communities he was expected to serve. Praetorian law has some significant characteristics in common with modern administrative law. Continental systems of administrative law have profited by the Roman model, and have not permitted a formal and mechanical theory of the separation of powers to interfere with administrative concentration of authority.

It is in Anglo-American jurisdictions, and primarily in the United States, that the most marked contrasts have been fostered between judicial justice, presumed to be based upon rules and principles and furnishing norms according to which any case or controversy can be decided, and administrative justice, believed to be based upon custom, expediency, community sentiment, and following in practice an inspired officialism. It is perhaps not fully recognized that whether a man acts as a judge or as an administrator, his mental attitude and approach to the settlement of controversies will follow certain well defined and predetermined criteria and standards, and that the individual and personal element is likely to play a minor rôle. The extent to which mental judgments and choices are confined and analyzed by the merely normal conditions and processes of thinking has been overlooked in the appraisal of administrative action. On the other hand, the relatively large rôle of individual views and reactions in their effects on judicial justice has been minimized.

²⁰ Hunter, *A Short History of Roman Law* (4th ed.), 42.

VII

The advantages and disadvantages of administrative justice may be estimated by comparing the characteristics of judicial justice with those of administrative justice. Among the principles and features of judicial justice are generally understood to be the principle of judicial independence and permanent judicial tenure. It is expected that judges will be guided by rules and principles, will have no personal interest in the cause, and will consider a case only in a suit between parties, a *lis inter partes*. When acting in this capacity, the judge is not liable for his action, whether wrongful, malicious, or corrupt. The proceedings of the trial must be public and according to known and established procedure. The judgment is to be in accordance with the evidence.

Administrative justice, on the other hand, is characterized by a hierarchy of authorities in which the officers performing administrative functions are usually subordinate to higher authorities. Such positions are usually subject to change more or less frequently. In administrative proceedings, rules and principles are likely to have less weight and personality more. These officers are to a limited extent subject to the review of the courts for neglect of duty or abuse of authority, either through a review of the action of the officer or for liability for damages in case of error or mistake. Administrators usually have a personal interest in the cause they are considering. They may delegate their duties, and they may initiate action on their own motion. They have a continuing responsibility for results. In the hearing or trial of cases, they may act in certain respects without evidence or against the evidence, and may accept testimony not admissible in a court of law. They may establish standards of evidence of their own. With respect to such hearings, they are liable to review by the courts (except in the instances where their actions are made final and conclusive). Judicial review of quasi-judicial administrative action is usually confined to a consideration of questions of law or of extreme abuse of authority, and as a rule such review is sought in relatively few cases.

The chief advantages of administrative tribunals are deemed to be cheaper justice (particularly to litigants), speedy determination of issues, facilities for settling a controversy or fixing a policy which results from experience in the special field. In this respect they have an advantage over courts of law, which have few facilities for acquiring information on the details of social phenomena. Administrative tribunals have the advantage of flexibility in the discharge of their functions, being less hampered than judges by technical principles of law or judicial precedents. They have the authority and duty to formulate and adopt policies

which tend toward improvement in administrative methods and in the control of social relationships.

The disadvantages of administrative tribunals are that their proceedings commonly lack publicity and their decisions are seldom published. The failure to give reasons for their decisions or to publish reports frequently renders informed criticism of their decisions very difficult. The sheer necessity of speed in the determination of cases is likely to mean that facts may not be investigated fully. Where judicial review is not actively exercised, or professional criticism and check of administrative action by administrative courts or boards is not provided for, there is a distinct tendency for administrators to assume an attitude of arbitrariness and of officiousness. Experience has demonstrated, however, that these difficulties may be met without any radical changes in administrative organization and procedure.

Much of the criticism directed against the present practices and procedure before administrative officers seems to be inspired by an idealization of the common legal methods of adherence to precedent, and of the use of logic in the process of the rationalization of judgments rendered. Referring to the powers allotted to the Federal Trade Commission in the United States, Mr. Henderson observes: "I do not see how this important duty can be performed, unless the Commission is ready to publish its decisions in such form that the reader can tell what has been decided and by what reasoning the decision is supported."

But what would the publication of decisions, and the attempts to rationalize the processes of thinking involved, mean? It would mean the building up of cases as precedents, the effort to develop doctrines and principles into a logical and symmetrical system, and a tendency to emphasize the formal processes of thought concerned, with annotations, digests, commentaries, *ad infinitum*—all given a prominence often, perhaps, out of relation to the adjustment of individual controversies and the issues of justice or fairness arising therefrom. In Continental European countries, where judges are more frankly authorized to consider cases on the basis of fairness or equity, if decisions are reported at all, they seem to conceal quite effectively the reasons for the judgments arrived at. The development of a consistent and coherent system of law is left to the commentators, text writers, and those who concern themselves with jurisprudence or doctrines.

There are no doubt fields in which a relatively high degree of certainty and formality is desirable, such as in the regulation of transportation systems, and in which the statement of reasons for the decisions rendered and the publication of reports may be deemed necessary and indispensable. But to insist upon a similar plan for the typical administrative

board or commission would fasten upon its procedure the formalities and technicalities of discredited common law processes, when what is needed is the evolution of practices more expeditious and less cumbersome than formerly prevailed in chancery. Commenting on the administrative practices in connection with the application of the criminal laws, Raymond Moley notes that "administrative methods are not always clear-cut objective things that can be easily subjected to a nice scientific analysis. They are deeply involved in considerations which go to the motives of human conduct, which involve political relationships, economic forces, factors in public opinion, and in a great many well-nigh imponderable and immeasurable considerations."²¹

After all is said for and against administrative justice, a good case may be made out for the tendencies which are now so apparent in Anglo-American countries, and which have heretofore resulted in the development of an efficient model of administrative organization and procedure in Continental European countries. Indicative of a point of view which is now coming to be a prevalent one, the conclusions of Mr. Robson seem to give a fair appraisal of results accomplished and the prospects to be anticipated in the enlargements and extensions of administrative justice: "The judicial power which has been given to administrative bodies will, I believe, be exercised wisely, and the results are likely to be good. After surveying the facts with all the care and thoroughness in my power, I am convinced that administrative tribunals have accomplished, and are accomplishing, ends which are beyond the competence of our courts of law as at present constituted. Furthermore, those ends seem to me socially desirable ones which compare favorably with the selfish individual claims based on absolute legal rights to which the formal courts are so often compelled to lend ear. I believe that administrative law as it has developed in modern England is filling an urgent social need which is not met by any other branch of the law; and that there is no inherent reason, if due care and foresight are exercised, why it should be unfitted to take its place side by side with the common law and equity and statute law in the constitutional firmament of the English governmental system. I believe that administrative justice may become as well-founded and broad-based as any other kind of justice now known to us and embodied in human institutions."²²

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American Administrative Law in 1931. An analysis of administrative law cases which federal and state courts decided during 1931 re-

²¹ *Politics and Criminal Prosecution* (New York, 1929), 46, 47.

²² *Justice and Administrative Law*, 324.

veals some exceptionally interesting problems and tendencies. These will be considered under the following main headings: (1) the separation of powers and administrative action, (2) principles regulating administrative determinations, (3) conclusiveness and appeal, (4) the law of officers, (5) the liability of officers, (6) community liability, and (7) the remedies against abuse of power.

I. THE SEPARATION OF POWERS

The legislature will not be permitted to commit to the judiciary powers which are primarily legislative; nor will the legislature be permitted to constitute the governor a member of the public service commission. The Water Power Act of the West Virginia legislature, which attempted to impose advisory powers upon the governor and the circuit court, was declared invalid in its entirety in the case of *Hodges v. Public Service Commission*.¹

The governor will be restrained from suspending a tax official whom he has found guilty of "gross malfeasance," because the separation of powers requires that an official accused of embezzlement shall have "a day in court." Hence in *Fugate v. Weston*,² a portion of the tax code of Virginia wherein the legislature provided the governor with said power was declared unconstitutional. The chief justice dissented, pointing out that such a strict construction is unwarranted by the precedents and by sound administrative practice. His view appeals to the writer as the more salutary one.

Administrative tribunals which have been created for regulatory purposes will not be permitted to encroach upon the powers of the courts, although they may be given "quasi-judicial" powers. In *People v. Swena*,³ the supreme court of Colorado held that in fining a motor vehicle carrier for contempt because it had violated the commission's order, the public utilities commission acted without constitutional warrant. The statute attempting to confer said power was held unconstitutional. Nevertheless, the power of public utility commissions to cite for contempt is admitted, under certain conditions, in several jurisdictions.⁴

A statute which attempts to confer administrative and legislative powers upon the courts in the matter of abolishing grade crossings will be held unconstitutional. This was reaffirmed in *State of Minnesota v. Chicago, Milwaukee, St. P. & P. R. Co.*, 50 F. (2d) 430. The court argued that the deliberations before the Minnesota railroad and ware-

¹ 110 W.Va. 649, 159 S.E. 834.

² 156 Va. 107, 157 S.E. 736.

³ 88 Colo. 337, 296 P. 271.

⁴ David E. Lilienthal, "The Power of Governmental Agencies to Compel Testimony," 39 *Harv. Law Rev.*, 694 (1926).

house commission in the matter of separation of grades were not judicial proceedings, but an exercise of legislative and administrative powers. Whether an order is lawful and reasonable, however, may become a judicial question.

How far the legislature may go in clothing the administration with a garb which resembles legislative or judicial power is one of the most intriguing problems of American public law. There is nothing approaching consistency, but the main development is toward a greater intermingling of powers.

II. PRINCIPLES REGULATING ADMINISTRATIVE DETERMINATIONS

1. *Discretion.* The ambit within which administrative officials will be permitted discretionary power is closely related to the general question of the separation of powers. Discretion is considered the core of policy-making, and hence it is usually thought of in association with the other two departments of government. But discretion becomes constantly more necessary in modern administration.

The statutory powers of public service commissions will be construed strictly. In *Public Service Commission v. Sun Cab Co.*,⁵ the public service commission of Maryland attempted to derive the power to require taxicab drivers to take out indemnity insurance as a prerequisite to operating cabs from the "safety" and "service" clauses of the public utility statutes, wherein other vehicles were mentioned, but taxicabs were not. The court ruled that the commission's powers must be limited to those expressly provided by the legislature.

A law authorizing the governor to postpone the opening of the hunting season "for such time as he may designate" is not unconstitutional as a delegation of legislative authority. However, in the case of *State v. Burkhard*,⁶ the governor's proclamation suspending the open season for hunting "until ordered opened by proclamation" was declared void for indefiniteness and uncertainty.

The athletic commission of California did not abuse its discretion, it was decided in *Young v. State Athletic Commission*,⁷ in denying a license to conduct wrestling contests, where the applicant's contract for lease was of doubtful validity and was cancelable upon thirty-day notice.

A county auditor is a ministerial officer, and can exercise only those powers conferred by the constitution or statutes. A statute requiring the publication of notice of tax sales in newspapers of opposite political parties leaves the auditor no alternative. In this case, *Bloomfield Demo-*

⁵ 160 Md. 476, 154 A. 100.

⁶ 135 Ore. 86, 294 P. 1103.

⁷ Dist. Ct. App. Calif., Jan. 6, 1931; 295 P. 61.

crat v. Board of Commissioners of Greene County,⁸ the court held that injunction is the proper remedy.

Considerable discretion is granted to prohibition enforcement agents. In the case of *Wynne v. Romonat*,⁹ a banker was denied permission to operate a cereal beverage plant. In sustaining the commissioner, the court held that the commissioner alone has power to determine whether an application to operate a cereal beverage plant is made "in good faith." This decision follows the famous precedent of *Ma-King Products Co. v. Blair*.¹⁰

One of the best examples of discretionary power arose from the refusal of Secretary Wilbur to receive certain applications for gas and oil land permits. The immense discretion granted the Secretary of the Interior under acts of Congress was again upheld in the case of *United States ex rel. McLennan v. Wilbur*, 283 U.S. 414 (1931).

An order of the Texas railroad commission inaugurating a so-called proration plan regulating and limiting production of oil and gas throughout the state was held invalid as being beyond the authority of the commission, in *Macmillan v. Railroad Commission of Texas*, 51 F. (2d) 400. The court objected because output was limited, not to each well, but to each unit of twenty and forty acres, notwithstanding the number of wells upon it. Proration schemes have been upheld in other states,¹¹ and by the United States Supreme Court.¹²

The Missouri workmen's compensation commission exercised a sound discretion in deciding that an injury to a street railway machinist, resulting when struck in the eye by a baseball bat while watching an indoor baseball game during lunch hour on the employer's premises, arose "out of and in course of employment," and was therefore compensable. This was held in *Conklin v. Kansas City Public Service Co.*,¹³ one of scores of similar cases which arise throughout the country during the year. The court's concluding observation fittingly describes the general situation with reference to administrative discretion; it shows how, through diversity and experimentation in the several jurisdictions, American law constantly grows. "The rulings in foreign jurisdictions," states the court, "must be held to be conflicting in the application of the law

⁸ App. Ct. Ind., Aug. 12, 1931; 177 N.E. 361.

⁹ 46 F. (2d) 29.

¹⁰ 271 U.S. 479 (1926).

¹¹ Certain aspects are analyzed in W. P. Z. German, "Compulsory Unit Operation of Oil Pools," 20 *Calif. Law Rev.*, 111 (1932). Some late cases are discussed in J. H. Marshall and N. L. Meyers, "Legal Planning of Petroleum Production," 41 *Yale Law Jour.*, 33 (1931).

¹² *Bandini Petroleum Co. v. Superior Court of State of California in and for Los Angeles County*, 52 S. Ct. 103 (1931).

¹³ *Kansas City Court of Appeals*, April 6, 1931; 41 S.W. 608.

to the fact similar to those in the case at issue. We must hold, however, that the greater weight of authority is to the effect that when an injury arises out of a settled practice or condition known to the employer, with which there is a casual relation between the injury and the employment, the injury is compensable."

2. *Requirement of Notice and Hearing.* Proper notice and hearing are requirements of "due process of law." Failure of the administration to offer proper opportunity to appear and be heard constitutes ground for appeal. The law relating to this sphere of administrative action was emphasized in the important case of *Saltzman v. Stromberg Carlson Telephone Co.*, 46 F. (2d) 612. In declaring the commission's order void, the court ruled that *ex parte* findings on evidence undisclosed to the applicant are insufficient. American law is strikingly at variance with British administrative law at this point, as illustrated convincingly in the *Arlidge* case.¹⁴

The requirements of notice and hearing do not necessarily entail a decision by judges. As a matter of fact, it was held in *Helfrick v. Dahlstrom Metallic Door Co.*¹⁵ that a hearing before the industrial board fulfils the requirements of due process, although the members thereof, with the exception of one, were not required to be lawyers duly admitted to practice law.

3. *Evidence.* The amount and nature of the evidence which an administrative body must demand before its decisions will be respected is still a subject of considerable conjecture. Court pronouncements range from "any" to "complete and satisfactory" evidence. The case of *Logan City v. Public Utilities Commission*¹⁶ seems to the writer particularly lacking in this requirement. Here an application for a rate increase was granted by the public utilities commission. The appellant city contended that inadequate evidence had been taken. The court, on appeal, did not even insist upon an abstract of evidence. Concerning the evidence presented before the commission, the court stated: "It may well be doubted whether the findings as made are sufficient to support the order." Nevertheless, the court decided that final orders should not be disturbed "until some rule or decision of this court is announced as to how full or complete the findings of the commission should be." Shades of the *Ben Avon* case!¹⁷

III. CONCLUSIVENESS AND APPEAL

In many respects, such as notice, hearing, evidence, and general procedure, American administrative tribunals have taken over a large seg-

¹⁴ (1915) A.C. 120.

¹⁵ 256 N.Y. 199, 176 N.E. 141.

¹⁶ Sup. Ct. Utah, March 17, 1931; 296 P. 1006.

¹⁷ (1920) *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U.S. 287.

ment of the accoutrements of courts of justice. But, more than by any other criterion, administrative justice is to be tested, on the one hand, by the degree of finality exercised by said tribunals, and, on the other hand, by the circumstances under which appeals may be carried to the ordinary courts. These are the interstices of administrative power and procedure in which much of American administrative law is secreted. In this field, as Dean Pound says, "standards" are being created which have a very profound effect upon the development of American jurisprudence.

The fields in which administrative finality plays a prominent part may be divided conveniently into "general" and "industrial" categories. In the first, or general, class, which includes immigration, revenue, public lands, health, sanitary, school, licensing activities, etc., the degree of administrative finality is rather complete; the courts seldom upset determinations made by this group of officials. About the only grounds for review are excess of jurisdiction or fraud and prejudice in dealing with the case. Speaking generally, "reasonableness" and sufficiency of evidence are regarded by the courts as matters which, in these fields, may best be entrusted to the discretion of trained officials. Various factors enter into the *raison d'être* of said immunity, such as overburdened court dockets, the necessity of definitive action (revenue), the long-established character of such determinations (meat inspection), the common law presumption of power to make final determinations (summary action and the abatement of nuisances), specific statutory provision of a large degree of finality, and the fact that life and liberty, rather than property, are the issues raised, for the most part, in such determinations.

Excerpts from a few cases will indicate the degree of finality which has been established in these fields. "The weight of evidence," said the court in *Nichols v. Commissioner of Internal Revenue*,¹⁸ "is a matter for the judgment of the board of tax appeals;" and it may "exercise its own independent judgment in reaching its conclusions." Again, "Treasury Department regulations have force of law when not in conflict with statute."¹⁹

The legislature has power to create a court having jurisdiction of controversies arising in the administration of a common-school system, with right of appeal from the county board of education to the state board of education, whose judgment should be final.²⁰

The taxing and budgetary powers present many important problems.

¹⁸ 44 F. (2d) 157.

¹⁹ *Williams v. Comm. Int. Rev.*, 44 F. (2d) 467.

²⁰ *Bd. of Education of Long Co. v. Bd. of Education of Liberty Co.*, 173 Ga. 203, 159 S.E. 712.

Particular interest attaches to administrative law as it relates to budgetary power and procedure. This is true since it is generally recognized that the budget is the center of modern efficiency, reorganization, and personnel reforms. During 1931, the judiciary was given an opportunity to decide upon the merits of one of these budgetary reforms in the significant case of *Sparkman v. County Budget Commission*.²¹ Here the budget commission was given statutory power to determine reasonable expenditures by county officers for employees' salaries and expenses of offices, respectively; and said determinations were to be final. This latter provision the court found null and void because it denied due process of law to persons having private property rights. The result reached seems to the writer exceedingly unfortunate and unnecessary. Why should not public management exercise the same privileges that private management holds so indispensable? These matters are properly administrative, and should be terminated there.

One of the most challenging cases is *Winning v. Board of Dental Examiners*.²² Here an accusation seeking revocation of license was brought by an employee of the board. The court held that "the writ of certiorari can be used only for the purpose of ascertaining whether the trial court or board has exceeded its jurisdiction." Furthermore, "prejudice of members of the board of dental examiners does not disqualify members from hearing proceedings to revoke dental licenses, nor constitute grounds for granting certiorari to review order of board revoking licenses."

In such cases, and also with reference to immigration and other matters,²³ some believe the courts have permitted too much latitude. Special administrative courts may supply the answer.²⁴

In the field of commerce and industry, the results and the considerations relative to court review are somewhat different. Here we may differentiate industrial accident commission determinations, insurance and banking cases, general business, and public utility regulations. Finality is almost complete with reference to workmen's compensation cases, somewhat less irreviewable in insurance and banking determinations, and subject to considerable uncertainty and variety in the regulation of general business and public utilities.

Scores of cases are appealed each year from the determinations of in-

²¹ Sup. Ct. Fla., Oct. 22, 1931; 137 So. 809.

²² D. Ct. App. Calif., June 8, 1931; 300 P. 866.

²³ This view is well expressed in Kenneth F. Burgess, "Recent Attempts to Immunize Commission Orders Against Judicial Review," 16 *Iowa Law Rev.*, 53 (1930).

²⁴ Such a proposal is contained in "Report on the Enforcement of the Deportation Laws of the United States," National Commission on Law Observance and Enforcement, No. 5, pp. 160-166.

dustrial accident commissions, but, with remarkably few exceptions, the formula of the courts runs about as follows: "The finding of industrial accident commission within its power, if supported by evidence, is conclusive upon the court, in absence of fraud." There are surprisingly few reversals. However, in *Bailey v. State Compensation Commission*,²⁵ just to show that there is not complete uniformity, the commission was overruled on a question of fact, where the issue involved the amount of an award due to a hip injury.

An interesting issue is raised in the question of whether or not a commission has the right to re-hear and re-decide its own final determinations. In *Tibbs-Dorsey Mfg. Co. v. State Industrial Commission*,²⁶ it was held that the industrial accident commission is without jurisdiction to review a final award, except on the ground that it was procured by fraud and misrepresentation. The industrial accident commission's finding that the final award was induced by fraud, when supported by competent evidence, will not be disturbed on appeal. Two justices rendered a long dissent, holding that there is no right to vacate a final award.

In determinations regarding general business corporations, the field of greatest uncertainty involves the Federal Trade Commission's finality in cases involving unfair practices and false and misleading advertising. The number of such appeals has fallen off markedly since last term, more, it is suspected, on account of the emasculating effect of former reversals²⁷ than because of greater clarity of the law regarding the subject. No important cases were found dealing with the findings of banking and insurance commissioners.²⁸

In the public utility field, uncertainty still reigns supreme, for national comparisons at least. Such cases as *Appeal of Town of Andover*²⁹ and *Great No. Ry. Co. v. Dept. of Pub. Works*³⁰ represent the liberal view regarding finality. For example, it was said in the *Andover* case: "The only question . . . is whether the body has acted illegally or has ex-

²⁵ 110 W.Va., 151, 158 S.E. 675.

²⁶ 147 Okla. 232, 296 P. 490.

²⁷ For example, *Federal Trade Comm. v. Klesner*, 280 U.S. 19 (1929); *Berkey and Gay Furniture Co. v. Federal Trade Comm.*, 42 F. (2d) 427 (1930); *Ohio Leather Co. v. Federal Trade Comm.*, 45 F. (2d) 39 (1930); *Federal Trade Comm. v. Good-Grape Co.*, 45 F. (2d) 70 (1930). These developments are summarized in Milton Handler, "Jurisdiction of the Federal Trade Commission over False Advertising," 31 *Columbia Law Rev.*, 527 (1931).

²⁸ In *Hawkins v. Swan*, 52 F. (2d) 688, it was held that the approval by the comptroller of the currency of a merger or consolidation of banks is a quasi-judicial act and not reviewable by the courts.

²⁹ Sup. Ct. Err. Conn., July 14, 1931; 155 A. 717.

³⁰ 161 Wash. 29, 296 P. 143.

ceeded or abused its powers; . . . it is not for the court to substitute its judgment for that of the commission."

In striking contrast with these views are the mental gymnastics of the United States Supreme Court in the recent cases of *Florida v. U.S.*³¹ and *U.S. v. Atlanta B. & C. R. Co.*,³² from which only confusion and the virtual rout of finality may be expected. In these cases, the court states that the conclusion of the commission requires not only evidence to support it but findings of appropriate definiteness to express it; and that, in the Atlanta case, only orders or determinations, as contrasted with reports or opinions, are subject to judicial review.

One of the most formative aspects of American administrative law is the new field of radio regulation. The results reached are not always the same. In *Ansley v. Federal Radio Commission*,³³ the court declared that the Radio Commission's finding that the state in which the applicant sought a broadcasting station construction permit already enjoyed more than a proper share of broadcasting facilities is presumed correct. The solution is not nearly so simple, however, when property interests have become vested. The commission was reversed in *Courier-Journal Co. v. Federal Radio Commission*,³⁴ and in *Journal Co. v. Federal Radio Commission*.³⁵ In the latter case, the court concluded that the commission's finding that four stations assigned the same frequency as the appellant's station could be simultaneously operated without intolerable interference was manifestly against the evidence. The court did this even though admitting that "the commission is better equipped than this court to work out an equitable solution of the problem."

IV. THE LAW OF OFFICERS

1. *What is an Office?* In the case of *State v. Botts*,³⁶ it was said: "A person in the government's service under authorized election or appointment, whose duties are continuous and defined by governmental rules, and are part of the regular administration of government, holds public office." But such a broad definition is by no means acceptable in every state. For example, a road superintendent of Surry county³⁷ was held not an officer, but an agent, of the highway commission (although the position was created by statute); hence injunction, not quo warranto, was the proper remedy to restrain the road superintendent from exercising the duties of his employment. The other extreme is found in

³¹ 282 U.S. 194.

³² 282 U.S. 522.

³³ 46 F. (2d) 600.

³⁴ 46 F. (2d) 614.

³⁵ 48 F. (2d) 461.

³⁶ Sup. Ct. Fla., April 28, 1931; 134 So. 219.

³⁷ *Surry Co. v. Sparger*, 200 N.C. 400, 157 S.E. 27.

Dastugue v. Cohen,³⁸ where a member of the Republican state central committee was considered a public officer, and hence entitled to invoke an injunction to protect him in the occupancy of his office until the disputed title to said office could be determined by proper judicial proceedings.

The most satisfactory distinction between an office and an employment appears to be the one which Dr. Frank J. Goodnow suggested in his *Comparative Administrative Law*, namely: "While an employment may be created by contract as a result of the fact that the government may be in some cases a subject of private law, an office can never be created by contract, but finds its source and its limitations in some act of governmental power."

2. *De Facto Officers*. In *State ex. rel. Edwards v. Tippet*,³⁹ the court refused to issue a mandamus to compel a court reporter to supply a transcript of record which he had voluntarily taken. He was held not to be a *de facto* officer. A *de facto* officer, said the court, is "one who without lawful right exercises functions of office under circumstances calculated to induce people without inquiry to suppose that he is the officer."

3. *Quo Warranto*. The title to public office is tested by quo warranto proceedings. There has been a noticeable tendency to discourage the use of this remedy. One such example is the case of *Sugart v. Thorpe*.⁴⁰ Here an attempt was made to test the right to office of certain school district commissioners. Quo warranto was denied because individual taxpayers, having only a general public interest, could not maintain an action in quo warranto, even though the attorney-general or the county attorney declined to institute or prosecute such an action.

4. *Qualification and Duration of Office*. The death, before qualifying, of a person elected to office, does not create a vacancy if the incumbent is authorized to hold until his successor qualifies.⁴¹ The general common-law rule is that a public officer cannot give an appointee tenure of office beyond his own.⁴² Finally, if a state officer accepts an incompatible federal office, causing a vacancy in the first office, the subsequent resignation of the federal office will not restore the state office.⁴³

5. *Unenforceable Contracts of Officers*. Contracts made in violation of duties of public officers are against public policy and unenforceable, and will be cancelled by a court of equity. This rule was restated in *Tuscan*

³⁸ 14 La. App. 475, 131 So. 746.

³⁹ Sup. Ct. Fla., Mar. 11, 1931; 134 So. 52.

⁴⁰ 147 Okla. 152, 295 P. 605.

⁴¹ *Commonwealth v. Lamar*, 302 Pa. 97, 153 A. 124.

⁴² *Opinion of Justices*, 37 Ohio App. 532, 175 N.E. 644.

⁴³ *State v. Piper*, Ct. App. La., Apr. 9, 1931; 133 So. 812.

v. Smith,⁴⁴ where the lease of a town building to a selectman's brother was held unlawful because of said official's interest therein as the brother's creditor. The case of *Douglas v. Pittman*⁴⁵ goes still farther. Here the office of a member of the city board of education was declared vacated because he was interested in certain contracts with the board, even though the officer's motives were admittedly proper and his acts unprofitable.

6. *Removal of Officers.* Perhaps the most interesting case involving the removal power, aside from *Fugate v. Weston*, which was considered above,⁴⁶ arose from the removal of a watchman in the city of San Francisco. A charge of insubordination was lodged with the civil service commission. No personal notice of a hearing was given, although a letter was addressed to the discharged employee. The appellant did not attend the hearing. On appeal from the lower court in *McGinn v. Department of Public Health*,⁴⁷ it was held that a decision of the civil service commission, made final by charter provision, is not reviewable for defects or deficiencies in evidence, and that the appellant had obtained all the notice and hearing to which he was entitled. The disposition to hold the decisions of the removal board virtually irreviewable may be noted in all parts of the country.

V. THE LIABILITY OF OFFICERS

America, like England, has proceeded under the assumption that "the king can do no wrong." Hence, in order to recognize liability at all, it was necessary to admit the common-law liability of officers. Even this sphere is, however, surrounded by certain legal and practical difficulties. For example, it was held in *Automobile Abstract and Title Co. v. Haggerty*⁴⁸ that a suit brought against the secretary of state of Michigan for injunction and damages arising out of the infringement of patent rights was in essence a suit against the state, and hence not maintainable without its consent. On the other hand, in *Miller v. Standard Nut Margarine Co. of Florida*,⁴⁹ involving the alleged wrongful conduct of a federal tax collector, the United States was held not a necessary party. Since the exemption of the government does not remove the personal liability of officers, the collector was held liable for unlawful collections under the Oleomargarine Act of 1886.

In the case of *Edelman v. Dunn*,⁵⁰ an assistant prosecutor was held

⁴⁴ Sup. Jud. Ct. Maine, Jan. 23, 1931; 153 A. 289.

⁴⁵ Ct. App. Kent., June 12, 1931; 39 S.W. (2d) 979.

⁴⁶ 156 Va. 107, 157 S.E. 736.

⁴⁷ Ct. App. Calif., Apr. 6, 1931; 288 P. 118.

⁴⁸ 49 F. (2d) 79.

⁴⁹ 47 F. (2d) 79.

⁵⁰ 107 N.J.L. 353, 153 A. 524.

not liable for damages arising from delay in examining security and approving and accepting bail bond, even though actuated by an improper motive.

A more advanced view of official responsibility is represented in a late California decision, *Imperial Co. v. Adams*.⁵¹ In this case, a member of the county board of supervisors was held financially liable for the board's approval of false claims for road work collected by a supervisor and countersigned by himself.

Speaking broadly, officer liability has increased, both legally and practically, with the requirement of ample official bonds from public officials. Not many years ago, a judgment was frequently worthless because men with property would not undertake public office so long as the possibility of losing everything hung over them. Even under improved conditions, however, it is undoubtedly true that individual officers are forced to carry a liability which belongs in considerable part to the community as a whole.

VI. LIABILITY OF THE GOVERNMENT

The current of American legislation and adjudication is in the direction of allowing greater opportunity to sue governmental subdivisions. This development is most noticeable in the case of municipalities, which are corporations, and hence do not possess the mystical attributes of sovereign immunity to the same degree as do the states and the federal government. One needs to remember that it is precisely in the field of municipal activity that the predominant number of relationships occur between the government and the individual. America is now two-thirds urban. This same tendency to relax the historical doctrine of sovereign immunity is strikingly evident in counties and states as well. Although it should be recognized that an awakened sense of social responsibility for public torts usually takes the form of statutory permission to sue, the net result is the protection of the citizen through the courts from excess of power, malice, nuisance, or negligence. It is increasingly recognized that it is not sufficient simply to restrain illegal action by mandamus or injunction. When a tort has been committed, the aggrieved individual must be assured substantial damages. There has long been a judicial presumption that redress is due in most cases where the government maintains a nuisance. But, because only certain limited functions were considered "private" or "proprietary" as contrasted with "governmental," tort liability on other grounds such as negligence has heretofore been admitted by the courts very sparingly. Especially in certain sections of the country, there is a clear determination to extend liability

⁵¹ D. Ct. App. California, Sept. 28, 1931; 3 P. (2d) 953.

to functions which have consistently been regarded as governmental, and hence formerly non-suable. A fair picture of governmental liability will appear in an analysis of significant cases which were determined in 1931.

1. *Liability for the Safe Condition of Public Passage-ways.* In the case of sidewalks, streets, bridges, public squares, etc., there has long developed a presumption of public responsibility for their safe condition and upkeep. The salutary effect of this rule is noticeable in the special attention usually given to these matters throughout the country. The case of *Fontaine v. Follett*⁵² was an action of trespass for negligence against the city treasurer for the injury of a bicyclist who ran into a depression around a water-valve box. In awarding damages, the court ruled that notice to the city of a depression in the street caused by its employee's act need not be shown in order to recover for the resulting injury to a bicyclist. The facts were similar in *Woodward v. City of Waterbury*,⁵³ except that, in addition, ice and snow had not been removed from the sidewalk where the accident occurred. The city was held liable for \$8,000 damages. Moreover, a city is liable for the safe condition of a railing abutting the sidewalk,⁵⁴ for injury caused when a cannon projects over a sidewalk,⁵⁵ and for the parkway between the sidewalk and the paved portion of the street.⁵⁶ Finally, in the case of an injury due to the sprung expansion plate of a public bridge, it was held that the open and notorious continuance of a defective condition for a month before the pedestrian received injuries charged the authorities with sufficient notice; hence damages were awarded.⁵⁷

On the other hand, such liberality is not invariably forthcoming. The case of *O'Rourke v. City of Washington*⁵⁸ held that where a motorist collided with an embankment, the city was not liable for negligence simply because the street was insufficiently lighted. There is no legal duty to light streets and thoroughfares in any specific manner. Likewise, in *Densmore v. City of Birmingham*,⁵⁹ it was held that the unsatisfactory character of a street in one particular place did not constitute sufficient ground for holding the city liable when an automobile collided with the city street sweeper at that point. The governmental character of the street sweeper was regarded determinative, not the condition of the street.

⁵² 51 R.I. 413, 155 A. 363.

⁵³ Sup. Ct. Err. Conn., July 29, 1931; 155 A. 825.

⁵⁴ *Usletten v. City of Brookings*, Sup. Ct. S.D. Apr. 6, 1931; 235 N.W. 705.

⁵⁵ *City of Macon v. Stevens*, 42 Ga. App. 419, 156 S.E. 718.

⁵⁶ *Smith v. City of St. Joseph*, Kansas City Ct. App. Mo., Jan. 5, 1931; 35 S.W. (2d) 975.

⁵⁷ *Kacsanik v. Passaic Co.*, Sup. Ct. N.J., July 2, 1931; 155 A. 751.

⁵⁸ 304 Pa. 78, 155 A. 100.

⁵⁹ Sup. Ct. Ala., June 11, 1931; 135 So. 320.

2. *Public Vehicles.* Considerable ground has been gained, through both legislation and adjudication, in making governmental units liable for the negligent operation of public vehicles. Several states, such as Pennsylvania and California, have passed statutes clearly establishing such responsibility. The old rule is found in a case such as *Bandos v. City of Philadelphia*.⁶⁰ Here a minor, while walking on the sidewalk, was hit by a city vehicle. In an action for trespass, the court held that the carrying of ashes and refuse to the city dump is a governmental function, rendering the city not liable for negligence. But contrast this case with *Wolfe v. City of Miami*,⁶¹ which enunciates a new rule that is becoming current in several southern states. In the court's syllabus, one finds: "Where an automobile was not owned by a municipality, but was being used by a municipal employee with the knowledge and consent of the city on the city's business" [the purchase of food for convicts], the city is liable for the vehicle's negligent operation. This case follows a rule of liability for negligence in the performance of governmental functions which was laid down in *City of Tallahassee v. Kaufman*.⁶² This case involved the operation of a fire truck, and expressly refused to follow the old rule of non-liability laid down in leading cases like *Aldrich v. City of Youngstown*.⁶³

3. *Drains and Sewers.* In all except three or four jurisdictions,⁶⁴ liability has been established for the safe condition and operation of drains and sewers. For example, it was said in *City of Amarillo v. Ware*⁶⁵ that the construction of storm sewers is not a strictly governmental function, and hence the city is not relieved of liability for damage done to adjacent lands. Similarly, a landowner could recover from a municipality for sewage disposal causing damage.⁶⁶ However, the occasional overflowing of surface water in an artificial channel is not actionable because not a permanent nuisance.⁶⁷

Wisconsin is one of the states in which the old common-law immunity prevails. In the case of *Erickson v. Village of West Salem*,⁶⁸ a municipality was held not liable for the death of a boy who was drowned in a drain, the mouth of which was unguarded. The justices expressed deep regret that common justice could not be done, but pointed out that remedial action depended upon legislative authorization.

⁶⁰ 304 Pa. 191, 155 A. 279.

⁶¹ Sup. Ct. Fla., May 6, 1931; 134 So. 538.

⁶² 87 Fla., 119, 100 So. 150 (1924).

⁶³ 106 Ohio St., 342, 140 N.E. 164 (1922).

⁶⁴ McQuillin, *Municipal Corporations*, Vol. VI, p. 920.

⁶⁵ Comm. App. Tex., June 10, 1931; 40 S.W. 57.

⁶⁶ *Wagner v. Town of Andover*, 200 N.C. 82, 156 S.E. 167.

⁶⁷ *Cashin v. City of New Rochelle*, 256 N.Y. 190, 176 N.E. 138.

⁶⁸ Sup. Ct. Wis., May 12, 1931; 236 N.W. 579.

4. *Miscellaneous.* In *Hoffman v. City of Bristol*,⁶⁹ damages were awarded for personal injury resulting from the maintenance of a nuisance in the form of a diving board above shallow water in a city pool. The following rule was stated: "A municipality's liability for nuisance cannot be avoided on ground of exercising a governmental function."

*Morrison v. Smith Bros.*⁷⁰ involved the liability of a special administrative district, which was formed under the Municipal Utility Act of California, for the death by drowning of four persons. Liability depended upon whether said district was to be held "proprietary" or "governmental." The trial court decided not to award damages. The supreme court reversed the decision, holding that the district was more analogous to a municipality than to the state, with its sovereign non-liability. It was stated that "the rule excluding state agencies from liability for tort is an exception to the general rule which we are not inclined to extend."

Further illustration of the Florida rule of tort liability in negligence cases arising from governmental acts is found in the case of *Chardhoff Junk Co. v. City of Tampa*.⁷¹ A municipality may be held liable for damages resulting from the negligent operation of a municipal incinerator, irrespective of whether said operation constitutes a public nuisance.

The judgment of a county superintendent of schools in dismissing a teacher is not conclusive in direct attack, where fraudulent action is proved. The school township is liable for the wrongful acts of its officers.⁷² The analogy to the French *faute de service* is striking.

VII. REMEDIES AGAINST ABUSE OF POWER

In addition to appeals to higher administrative bodies or "legislative" courts, the common law and equitable writs of habeas corpus, certiorari, mandamus, quo warranto, prohibition, and injunction are available, under proper circumstances, for appeals to the ordinary courts.

Instances have been given above of the circumstances surrounding the employment of the respective remedies. It will suffice to present a few illustrations of the most frequently used writs.

The purpose of mandamus is to enforce a ministerial responsibility. In *State v. Long*,⁷³ the court refused to issue mandamus to force the governor to obtain a loan in order that the increased salaries of the public service commission, ordered by the legislature, might be paid. An

⁶⁹ Sup. Ct. Err. Conn., June 22, 1931; 155 A. 499.

⁷⁰ 211 Cal. 36, 293 P. 53.

⁷¹ Sup. Ct. Fla., July 21, 1931; 135 So. 457.

⁷² *Keener School Township v. Eudahy*, App. Ct. Ind., Mar. 31, 1931; 175 N.E. 363.

⁷³ 172 La. 1028, 136 So. 41.

executive officer cannot be compelled by mandamus to perform an act or duty involving judgment or discretion.

Mandamus was the appropriate remedy to require municipal officers to call an election for the selection of their successors. However, the court took pains to point out that generally mandamus will not lie on mere anticipated default of duty.⁷⁴

A final contrast will suffice. Mandamus is improper to compel road commissioners to repair county roads, or to prevent their discretion in laying out new roads.⁷⁵ However, mandamus will be issued to require state highway commissioners to make an appraisal and to reimburse a town for paving a street constituting part of a state highway system specifically ordered by the legislature.⁷⁶

In cases which involve jurisdiction and the exercise of discretionary power, the proper writ is certiorari.⁷⁷ Injunction, like mandamus, will also be employed to force a certain action by the administration. Its more common purposes are to prevent irreparable damage and a multiplicity of suits.⁷⁸ The writ of prohibition is now used very infrequently, especially against officers.⁷⁹

VIII. SUMMARY OF DEVELOPMENTS

The above discussion is not intended to suggest the unusual importance of the year 1931; rather it serves to exemplify tendencies which have been under way, in some cases, for a considerable number of years. The most important of these developments may be hypothesized as follows: 1. A growing distinction is made between "legislative" or "administrative" courts, and "constitutional" or "ordinary" courts. 2. The passage of general laws, permitting supplementary details to be filled in by the administration. 3. The performance of a large proportion of judicial work by administrative officers and commissions; the narrowing of the foundation of "common" law. 4. The presumption of increased proportions of discretionary power as a necessary element of modern administration. 5. A high degree of finality in decisions rendered by certain classes of officials; greater confusion in distinguishing law and fact in others; an increase of appeals to higher administrative officials as an alternative to appeal to court. 6. In such matters as notice, hearing, evi-

⁷⁴ *Town Council of Gunterville v. Henry*, 222 Ala. 474, 133 So. 5.

⁷⁵ *Van Valkenburg v. Stone*, 172 Ga. 642, 158 S.E. 419.

⁷⁶ *Town of West Greenville v. Jones*, 161 S.C. 186, 159 S.E. 551.

⁷⁷ *Winning v. Board of Dental Examiners*, Ct. App. Calif., June 8, 1931; 300 P. 866.

⁷⁸ *McIntyre v. Harrison*, 172 Ga. 65, 157 S.E. 499.

⁷⁹ *March v. Goldthorpe*, Mayor, 123 Ohio St. 103, 174 N.E. 246.

dence, and general procedure, administrative tribunals tend to assume the principal characteristics and attitudes of ordinary courts; generally, their speed, reduced cost, and informality are a model for judicial reform. 7. The legal distinctions between an "office" and an "employment" are not uniform; nor are they usually followed consistently. 8. Quo warranto is used with less frequency to test title to office. 9. The federal removal power is complete; generally, the municipal removal power has few or no limitations; the governor's power is still largely withheld or limited. 10. The tort liability of officers has increased in law and in practical operation. 11. Liability for public nuisances is well established. 12. Statutory provision of public liability for negligence has increased in certain fields. 13. In southern states, especially Florida, the courts have liberalized the sovereign immunity for "governmental" acts, as regards both nuisance and negligence; a general tendency in this direction is observable in most sections. 14. The exact circumstances in which the "extraordinary remedies" are applicable differ considerably in the several jurisdictions.

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The Prestige Value of Public Employment. In 1929, the University of Chicago Press published the first intensive study of the prestige rating of municipal employment, the results of an experiment enlisting the coöperation of over 5,000 residents of Chicago and yielding over 90,000 separate expressions of opinion on the relative status of municipal and private employment. The results of this inquiry were disturbing. The prestige of municipal employment in Chicago appeared to be less than that of corresponding private employment, and special inquiries into the integrity, courtesy, and competence of city employees revealed serious lack of public confidence. Prestige differentials were developed with reference to sex, age, education, occupation, and place of birth which showed wide divergences. The women displayed more confidence in city employees than men, younger persons more than their elders, those with little formal education more than those with college or university training, skilled and unskilled labor more than the professional men, and the foreign born more than the native born.¹

Since the publication of these results, there has been an increasing interest in the prestige of public employment and much discussion as to its importance and meaning. The question naturally was put as to whether the results reached in Chicago, with a record of low municipal

¹Leonard D. White, *The Prestige Value of Municipal Employment in Chicago* (University of Chicago Press, 1929).

accomplishment, were typical. On this issue, opinions varied widely. At the request of the Civil Service Assembly, a second study was undertaken to ascertain the attitudes of persons in other communities on the same subject; and the same methods were used in order to secure, as far as possible, comparable results. The results are summarized herewith, and will appear in greater detail in a forthcoming monograph.²

Using ten paired occupations (one public, one private) as one type of analysis, responses from 7,168 subjects in eleven cities widely scattered in all parts of the country³ showed that municipal employment has a higher prestige rating than private employment, thus reversing the results of the first study. Using the method of calculation employed in 1928, a prestige index of plus 10 was derived, as against a Chicago index of minus 14. This result, however, is inconsistent with the expressions of opinion made by the same individuals on other parts of the present experiment, and must be accepted with reserve.

Responses to fifteen relevant questions as to the comparative standing of city and private employment in such matters as relative opportunity, favoritism, value of experience, permanence, recognition of merit, and the like gave results very similar to those revealed in Chicago, and quite inconsistent with a high prestige rating. Combining the responses to all fifteen questions, the percentage favoring city employment was 26, private employment 52, non-committal 22. These correspond to 24, 55, and 21 per cent, respectively, as discovered in 1928 in Chicago.

Special study was again made of attitudes toward public and private employees on the three qualities of integrity, courtesy, and competence, using a nine-point completion test of which the fifth position was neutral. The results secured closely resemble the results found in 1928 and suggest an unfavorable opinion concerning public employees. The following table summarizes the results, combining the returns from each of eleven cities:

TABLE I

PER CENT DISTRIBUTION OF OPINION (7,168 CASES), CITY EMPLOYEES AS COMPARED WITH PRIVATE EMPLOYEES

<i>Trait</i>	<i>Per cent favorable to city employees</i>	<i>Per cent neutral</i>	<i>Per cent unfavorable</i>	<i>Per cent blank</i>
Efficiency	17.05	32.44	49.21	1.30
Honesty	13.41	51.55	33.77	1.27
Courtesy	13.87	28.28	55.20	2.65

² *Further Contributions to the Prestige Value of Public Employment* (University of Chicago Press).

³ New York, Trenton, Philadelphia, Columbus, Madison, Minneapolis, Seattle, San Francisco, Los Angeles, Salt Lake City, and Austin.

An effort was made in the present study to secure data showing the relative prestige standing of municipal, state, and federal employees. Two devices were tried. By employing paired occupations, city, state, and federal positions were compared each with the other for five widely different types of employment. The subjects were also asked to indicate on a scale showing five positions (very low, low, moderate, high, very high) where they placed city, state, and federal positions respectively. The results were consistent and illuminating.

Combining the choices for each of the five positions on each level of employment, we derive the following summary from the paired occupations:

TABLE II

PREFERENCES FOR CITY, STATE, AND FEDERAL EMPLOYMENT

<i>Type of Position</i>	<i>Number of Preferences</i>
City	5,999
State	29,066
City	4,623
Federal	30,493
State	5,915
Federal	29,152

These figures show the strong preferences for state and federal when compared with municipal positions, and for federal as against state. The order of prestige rises from municipal through state to federal.

The same conclusion is reached by analysis of the scale positions assigned to the three levels of employment, as indicated in the following table:

TABLE III

PER CENT DISTRIBUTION OF OPINION ON PRESTIGE OF CITY, STATE, AND FEDERAL POSITIONS

<i>Rating</i>	<i>Municipal</i>	<i>State</i>	<i>Federal</i>
Very low	5.38	1.02	1.13
Low	17.19	5.23	2.37
Moderate	61.49	44.40	21.40
High	11.29	43.12	37.65
Very high	3.14	4.67	35.90
Blank	1.51	1.56	1.55

Examination of this table shows five times as many "very low" ratings for municipal as for either state or federal positions, and about ten times as many "very high" ratings for federal as for either state or municipal positions.

Giving a weight of 1, 2, 3, 4, and 5 to the ratings from "very low" to "very high" respectively, and ascertaining the percentage of total

maximum ratings actually earned by each class of positions, we find the result to be 57.9 per cent for municipal, 69.2 per cent for state, and 81.3 per cent for federal positions. This is perhaps the clearest method of presenting the summarized results of the scale ratings, and confirms the high, intermediate, and low prestige of federal, state, and municipal positions, respectively.

Turning now to the various differentials, we find substantial confirmation of the results of the Chicago study of 1927-28. The differentials are not necessarily affected by the higher prestige level which was indicated in one part of the present inquiry. As a result of the two experiments, they appear to be reasonably well established.

The prestige index of the women in the present study was plus 20.68, that of the men plus 3.68, a spread of over 16 points as compared with a corresponding spread of eleven points in the first study. Analysis of the nine-point completion test with reference to the efficiency of municipal employees confirms the relatively unfriendly attitude of the men.

The age differential produced results closely resembling those secured in Chicago, the conclusion being that prestige varies inversely with age, the greatest change occurring in the years from 20 to 35. The prestige index of young people under 20 was plus 26; that of persons of 50 and over was minus 2.

The educational differential was not as clear as that derived from the first experiment, but the general results are in conformity. Persons with a common school education showed an index of plus 14, high school plus 12, college plus 11, and graduate school minus one. The variation is less marked than that shown in Chicago, for which the corresponding figures were: common school plus 18, high school minus 3, college minus 25, and graduate school minus 42.

The occupational prestige indexes revealed the executive-proprietor group with the most pronounced negative index, the clerical group in an intermediate position, and the students in the upper, positive range. By accident, a small group of 75 public employees was included in this inquiry; their index was in the intermediate group, slightly higher than the general average.

The influence of foreign attitudes is very neatly exhibited in the following table.

TABLE IV
PRESTIGE INDEXES BY PARENTAGE

<i>Parentage</i>	<i>Index</i>
Native born, native parentage	+ 6.4
Native born, mixed parentage	+12.2
Native born, foreign parentage	+12.2
Foreign born	+18.4

This showing also confirms the findings in the Chicago investigation.

Among the foreign-born groups, the Italians again lead the list, and the English, Irish, and Canadian groups again display the lowest index. This finding casts doubt on the depressing influence which "Big Bill" was thought to have cast over these subjects of King George residing in 1928 in Chicago. The negro index is substantially higher than the native white index in both experiments.

So far, therefore, as the bulk of the evidence of the present experiment is concerned, it appears that attitudes toward public employment in eleven widely scattered American cities are not as favorable as those relating to corresponding private employment. The findings drawn from preferences indicated on ten paired occupations, however, seem to show a definite advantage to public employees. These findings are in direct conflict with opinions expressed by the same subjects on other parts of the schedule, and must be taken with reserve. So far as the differential attitudes related to sex, age, education, occupation, and race or nationality are concerned, the present study broadly confirms the results disclosed in 1928 in Chicago.

Finally, the evidence of the present inquiry indicates that the prestige of federal, state, and municipal employment stands, respectively, on a scale of 100, at approximately 80, 70, and 60, the city positions receiving the lowest rating.

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The Wisconsin Executive Council. Chapter 33 of the *Laws of 1931* of the state of Wisconsin authorized the establishment of an executive council. Chapter 361 authorized the council to appoint a committee on business economics with certain functions. These two measures (which now constitute Chapter 15 of the Wisconsin Statutes, Sections .001 to .005 inclusive) resulted from the recommendation made to the legislature by Governor Philip LaFollette in his first message, presented on January 15, 1931.¹ The governor called attention to the need that popular representative government provide a responsible and efficient alternative to direct action in view of post-war developments throughout the world. He urged that a satisfactory alternative must provide ample consultation and study prior to the introduction of measures, the presentation of programs by the group ready to assume responsibility for their advocacy, ample opportunity for legislative criticism, and "continuing

¹ *Message of Philip F. LaFollette, Governor of Wisconsin, to the Wisconsin Legislature, Regular Session, 1931, Thursday, January 15, 1931.* Executive Office, State Capitol, Madison, pp. 8-11.

oversight of administration by responsible representatives of the public." He added that in Wisconsin the development of governmental policy had observed these conditions, and proceeded to suggest their further development, as follows:

I recommend that we provide machinery to continue and simplify the arrangement already begun whereby the responsible executive and legislative leaders may present at the beginning of the legislative session specific and detailed proposals for legislation on any major question of state policy.

I am not referring, in this consideration, to those details of legislation designed to perfect existing law. I have in mind proposals involving major changes in basic social and economic policy. Such legislation, of far-reaching consequences, obviously should not be proposed except as the result of careful research, full consultation with all interests it would affect, and meticulous draftsmanship. Such legislation should not be proposed unless and until some group is prepared to underwrite its soundness and urge its passage.

This plan should enable the legislature to proceed to an immediate consideration of definite measures. Preliminary committee work on these measures would have been instituted prior to the commencement of the session. From the first day of the session, the legislature as a whole could consider the basic policies involved in each proposal, and could accept, reject, or alter them in the light of a comprehensive program.

This procedure emphasizes the importance of the advance work to be done by committees prior to the convening of the legislature. During recent weeks, I have been in consultation with many members of this legislature as well as committees representative of important social and economic interests of the state of Wisconsin. This is a practice which I believe should underlie the relationship between the executive, the legislature, and the citizens of the state.

One theory of American government has been so interpreted at times as to isolate the executive from the legislative branch. But a shrewd observer of government, Walter Bagehot, once wrote that "administration includes legislation, for it is concerned with the far-seeing regulation of future conduct, as well as with the limited management of the present." It is equally true that legislation includes administration, through the concrete application of general legislative enactments. If we examine the adoption of important and fundamental policies in the history of American government, we find that joint effort of legislative, executive, and representative leadership outside the government secures permanent results. A narrow interpretation of the separation of powers has too often invited weak and irresponsible government. A legislative opposition, anxious to avoid responsibility for creative effort, has often been matched with a petulant and arbitrary executive. Under these conditions, the public business is neglected, and public apathy follows.

In order to avoid these evils, a powerful movement has developed in the past fifteen years. It has taken the form of a great increase in the discretionary powers of executive officers. This is due in part to the changed nature of governmental functions. Highly technical questions of health and labor standards require specific definition by experienced administrators. General policies for the regulation of utilities, determined by legislatures, must be applied to concrete cases.

But I doubt the wisdom of attempting to solve the fundamental question of responsibility for determining policy by an uncritical acceptance of this tendency. We can apply to this problem a principle fundamental to our traditions in this state—

the principle of joint coöperation. I urge a continuing relationship of this leadership, official and unofficial, in the study of our problems, the preparation of programs, and the supervision over the administration of the resulting legislation. The expansion of administrative discretion, as recently discussed by the chief justice of our Supreme Court, has raised serious problems of judicial protection of the rights of the citizen. It has raised equally serious problems of legislative-executive relationship.

I have two recommendations to make as an alternative to the blind acceptance of this tendency:

First, legislation providing for the calling together of legislative committees for periods of time when the legislature is not in session, for the consideration of specific problems. When so engaged upon the business of the state, the members should be paid their actual expenses. It would thus be possible, during the extended period when the legislature is not in session, for a more carefully planned program to be prepared. Thus the administration of policy could be observed closely by those through whom it had been originally enacted.

Second, legislation providing for the appointment of an executive council of not more than twenty members, to serve without compensation other than actual expenses. One-half of this council should be members of the legislature named by, and responsible to, it. The remaining members should be appointed by and responsible to the executive. It should be given ample powers of inquiry.

These proposals would, in my judgment, give a better opportunity for the continuous review of the activities of government in this state. They offer us a safeguard against hasty, arbitrary, and ill-informed developments of policy. They are an alternative to the drift toward extending arbitrary powers to the governor and the executive branch of government without some compensating controls. I agree that a governor must be held responsible for his actions as chief executive. I do not agree, however, that he should attempt to dictate, in isolation, the general policy of the political group in power. No one man has sufficient wisdom to diagnose the needs of the state. In the exercise of the extensive semi-judicial and semi-legislative powers necessarily given to administrative authorities, a continuing study of their trends and effects by both official and unofficial leadership is now essential.

But there is a second reason behind these recommendations. It relates to the opportunity for including on the executive council spokesmen for agriculture, manufactures, commerce, finance, labor, and similar basic interests in the state. A generation ago, America entered upon a period of scientific research which has yielded undreamed of productivity of goods and services. The movement has been extended into national and regional organizations of industries which have coöperated in research and established standard practices and methods.

The economic situation today requires a further step. We must mobilize for the solution of the critical problem of distribution the ability and experience which have perfected our machinery of production. In the midst of plenty, great sections of our population are suffering. The individual progress of one industry has no relationship to another; the use of natural resources, the need for integrating transportation facilities, the development of public works programs, all need planning in common.

It is possible for us to inaugurate for Wisconsin the first steps toward a planned development, to be achieved by the free coöperation of individuals and groups with the government of the state. No one section or member of the com-

munity is all-sufficient for this task. Our institutions of government should be designed to facilitate this taking of common counsel. In the conferences which have already been held with many groups in recent weeks, there has been generous response from representatives of many interests. We may yet turn our present economic difficulties to some permanent achievement if we establish a continuing practice of this kind.

Thus the recommendation made by Governor LaFollette centers upon the importance of the preparation of programs prior to the meeting of the legislature, in order to expedite public business and better prepare material for legislative discussion; the association of representatives of the legislature which has authorized a law with some continuous review of the exercise of administrative authority under the statute; and the bringing of responsible leaders drawn from different major interests in the state into consultation with the governmental leaders of the state. This procedure and organization were to be made available for consultative and advisory activities relating to social and economic problems as well as to political questions in the narrower sense.

The resulting legislation authorized the creation of the proposed executive council. The body consists of five senators and five assemblymen appointed "as are standing committees in the respective houses," and of "ten other citizens appointed by the governor without confirmation." All appointments "expire with the term of the governor during which they are made." Members of the senate committees are selected by an elective committee on committees; members of the assembly committees are appointed by the speaker. The appointments which have thus far been made reflect not so much a strong partisan interest as a desire to secure a genuine representation of different interests and points of view. The legislative representation is not drawn from one political faction alone; while the appointments made by the governor have ignored party affiliations in order to obtain for the council men who could speak with authority for important interests. Thus, large industry is represented by the presence on the council of the heads of an automobile manufacturing company, a paper mill, and a wood-products factory; labor is represented through the presence of the head of the Wisconsin Federation of Labor and the head of the Railroad Brotherhoods in Wisconsin; the president of one of the larger farm organizations is also a member. Because of the need for drawing upon the time and energy of representatives of the banking interests for association with the efforts on the part of the state government to prevent a banking collapse such as has been feared throughout the country during the depression, no appointments from that group have as yet been made.

The functions assigned to the council are of three types. The original

proposal made by the governor emphasize the function of consultation and investigation. In point of fact, there was already in existence a small "advisory council" consisting of the heads of the staff agencies (the director of the budget, the director of purchases, the director of personnel, and the state engineer). This the legislature abolished in establishing the new executive council, to which was transferred the former body's function of approving the rules and regulations made by the director of purchases for administering the laws relating to the purchasing of supplies and similar regulations governing the leasing of space for offices or the assignment of offices in state-owned buildings. Second, a measure introduced by a member of the Assembly calling for a committee (of the executive council) on business economics, with an executive secretary, gives special legal authorization for economic investigations and a supply of economic research facilities to Wisconsin firms. The chief function of the council, however, is stated as being advisory to the governor "in any matter which he may refer to the council," and to investigate the functioning of departments and to make studies of governmental problems (special reference being made to the possibility of consolidation and elimination of functions and departments). It is given the power to employ assistants and to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony. These powers are to be enforced, in case of disobedience on the part of any person, by the courts through contempt proceedings. All state departments and officials are required to make "such reports, collect such data, and conduct such studies to or for the executive council as it may require, and as can be made within the limits of the appropriation."

The executive council has been in existence for less than a year. During that time conditions were most unfavorable for the development of new institutions, since the energies of the governor and the legislative members were absorbed by a special legislative session devoted to the highly controversial problems of public relief, unemployment insurance, and taxation, and secondly because of the abnormal economic conditions requiring time and energy in maintaining some kind of economic stability. Nevertheless, a good deal of ground work has been done. There have been prepared for the council by various individuals or staffs in the administrative services or the various departments of the University of Wisconsin, and submitted to the council, an economic survey of the state, a power survey, a survey of agricultural credits, and a land use survey. A monthly bulletin of economic conditions has been issued in order to determine whether such a statistical picture would be of sufficient value to warrant regular publication. The governor has referred a number of

questions of policy to full meetings of the council for discussion, and has placed before special meetings called under the auspices of the council certain matters concerning which he wished to secure advice. Prior to the establishment of the council, he had held meetings with representatives of different industries in order to discover new ways in which the state might usefully coöperate with an industry which was seeking to develop a more effective economic government.

The most concrete development has been in the industries dependent upon forests. One committee which developed out of these conferences was responsible for the adoption of a so-called "lumber stabilization agreement" which sought to meet serious questions of unemployment and of ruthless cutting of remaining timber which the depression has brought about. Another committee representative of the lumber and the pulp and paper industries, the United States Lake States Forest Experiment Station, and the United States Forest Products Laboratory conducted a survey of the forest land use problem in Wisconsin which is now in print.²

The establishment of such an institution as the council naturally raises many interesting questions, especially for the political scientist. Will it be possible for the council to develop as a body representative of functional interests on the part of the members named by the governor, and yet to collaborate with the governor and members of the legislature with their party affiliations? Will the bitter controversies over economic policy, and especially taxation, make it impossible for a governor with strong views on economic policy to secure genuine coöperation from economic groups opposed to such policies? What relation will the council have to the regular "line" departments? How will it affect the problem of executive-legislative relations? In all these matters, it is obvious that in any administration the personality of the governor will play a large part. The brief experience thus far had does not warrant generalization or conclusions. But the institution is sufficiently important, both in itself and as a reflection of the times, to encourage our following its history, even if it proves to be a brief one.

It is interesting to notice that other states are also turning to some kind of consultative council for encouraging the formulation of problems and policies on the part of leaders of various interests in collaboration with governmental leaders. Governor Cross has appointed such an informal committee in Connecticut; the Greater Pennsylvania Council has been established in Pennsylvania; the South Carolina Council has been established in that state; while the land-planning work in New York,

² *Forest Land Use in Wisconsin*. Obtainable from the Director of Purchases, State Capitol, Madison, Wisconsin, for \$1.00.

and now in Iowa, is an indication of the same type of new approach to government.³ Another interesting example is the New England Council.

One possibility for the development of such councils as these has a special interest in view of the questions just reported on by the Committee on Ministers' Powers in Great Britain.⁴ The great extension of discretionary authority to departments should be accompanied by an increase in the capacity and training of the civil servant who is to exercise these powers. The review by a council representative both of the legislature and of responsible and important interests in the state may help to educate them in the importance of personnel and proper administrative organization and staff services. At the same time, in the use of these broad discretionary powers the expert may benefit from the presence of lay observers who are not bound by departmental or professional ties.

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³See Carl E. Ladd, "Land Planning in the Empire State," *New Republic*, Aug. 3, 1932, and J. L. Crane, Jr., "State Planning in Illinois and Iowa," *City Planning*, April, 1932.

⁴The struggle between Congress and the President over the exercise of discretionary powers of the federal commissions, reflected in controversies over confirmations, has led to the proposal for a recess congressional committee which would investigate the use of powers delegated by Congress to prevent their abuse or misapplication.

FOREIGN GOVERNMENTS AND POLITICS

The German Reichstag Elections of July 31, 1932.¹ Republican Germany elected its sixth Reichstag under the Weimar constitution on July 31. The largest vote ever cast for a Reichstag membership was recorded at this election—about thirty-eight million people, or 83.2 per cent of the qualified voters, casting ballots. Despite the predictions of disorder, and even violent revolution, the election day was quiet and orderly. Thousands of Germans, taking advantage of the liberal absentee voting law, voted at pleasure resorts where they had gone to spend the week-end. A certificate from the home precinct enables a German citizen to vote anywhere in the Reich. In the cities, voters waited in long lines at the polling places; but there was no congestion, for the actual voting took but a fraction of a minute and the whole voting procedure was well systematized.

The number of parties on the ballots varied from one district to another, but the average was about twelve or fourteen. Every imaginable type of opinion and freak "ism" was represented among the party lists. Party number twelve on one of the lists was labelled "Highest salary for civil servants, 5,000 marks. For the unemployed and victims of the war, hitherto trodden under foot." Another party was designated "National Middle Party against Fascism and Socialism." Still another party labelled itself "Justice movement against all parties and wage cuts and for provision for unemployment." Another party which polled over 87,000 votes made a bid for support in all directions by calling itself the "Radical Middle Party."

The number of members of the new Reichstag, fixed according to the size of the vote cast, is 607. The table on the following page indicates the division of these seats among the parties and the number of seats these same parties secured in the 1930 elections.

By gaining 230 seats in the Reichstag, the National Socialists (Hitlerites) became not only the largest party in the present Reichstag, but the largest single party ever to sit in that body. It is true that the pre-election claims of such Nazi papers as the *Angriff* and the *Völkischer Beobachter* were not fulfilled, but the showing was impressive. English newspaper correspondents in Germany asserted that a party making such a show of strength in Britain would be given control of the government even if it failed to obtain a majority. The Centrists and the Social Democrats believed that whether Hitler was made chancellor or not the high point of the National Socialist strength had been reached. Such a prediction may seem nothing more than party talk, of which there is plenty

¹ This note was written in Germany shortly after the election. *Man. Ed.*

REICHSTAG ELECTIONS OF 1930 AND 1932

<i>Party</i>	<i>Popular vote 1932</i>	<i>Popular vote 1930</i>	<i>Seats obtained 1932</i>	<i>Seats obtained 1930</i>	<i>Per cent of total vote 1932</i>
National Socialists.....	13,772,748	6,379,672	230	110	37.4
Social Democrats.....	7,953,686	8,575,244	133	136	24.3
Communists.....	5,365,666	4,590,160	89	78	14.3
Center.....	4,587,477	4,127,000	75	69	12.2
Nationalists.....	2,184,971	2,457,686	37	42	6.0
Bavarian People's Party..	1,202,617	1,058,637	22	19	2.8
German People's Party..	435,547	1,577,365	7	27	1.1
German State Party....	373,560	1,322,034	4	16	1.0
Christian Socialists.....	364,986	868,269	4	14	1.0
German Peasants' Party..	137,090	137,072	2	3	—
Farm Federation.....	96,868	193,899	2	4	—
Householders Party.....	146,107	1,361,762	1	21	0.4
German Land Party....	91,287	1,108,043	1	19	0.3
Hanoverians.....	46,873	144,268	—	—	—
Socialist Workers Party..	72,169	—	—	—	—
Scattering.....	209,579	—	—	—	—

in Germany at the present time. But among National Socialists themselves there was a feeling that it was a case of obtaining power at once under present conditions or never. Every condition favored extremist causes in this election—the economic depression, dissatisfaction among civil servants because of pay-cuts, the large number of despairing among all classes, and the sentiment prevailing everywhere that German morale would be strengthened and respect for Germany everywhere increased by adherence to a party making a strong patriotic appeal. The number of voters who had no special attachment for Hitler or his cause, but who believed that he should be given a chance, was particularly large. It was not uncommon to hear people say that they were going to vote for the National Socialists with the hope that Hitler would gain his majority; in that event, they were certain he would be such a failure that he would not be heard from again. These people were certain that such were the only means of getting rid of Hitler.

In the weeks immediately preceding the election, an observer might have concluded that the Nazis controlled well over fifty per cent of the voters. Nazi meetings were unsurpassed in numbers and enthusiasm. Some of the Hitler outdoor demonstrations reached the hundred-thousand mark in point of numbers. These meetings must have yielded the party treasury large sums, for besides incidental collections taken up among the crowds entrance fees of four and five marks were levied. Party leaders,

in figuring their votes, may have been misled by these demonstrations; large numbers of the curious attended them, for Hitler never failed to put on a good show. He is perhaps Germany's best stump orator. His patriotic appeal was undeniably effective. All the advantage that goes to a party or candidate that can put on a good show went to the Hitlerites. The special uniform of the Hitler storm troops appealed to the young men. Everywhere these special troops were to be seen, and everywhere they attracted attention. The special fascist salute made its appeal—again especially to the young. On election day, young people could be seen passing the Brown House in Munich—national headquarters of the Hitlerites—for the purpose of saluting the Nazi soldiers on guard. These youth would pass by, walk as far as the next corner, and return again to give the salute. Even older people seemed to derive considerable pleasure from giving this form of greeting. Another appeal of the Nazis was in the Hakenkreuz, mystic symbol of the ancients. It occupies the center of the Nazi flag; it is even marked along the trails in the Bavarian Alps. The appeal of this special ritual, as well as the appeal to patriotism, made a definite program unnecessary.

The position of the Hitlerites is, nevertheless, critical. The tactical course to pursue is not at all easy to determine. Under ordinary circumstances, they would be expected to take part in a coalition government, and they are reported to have agreed, in a conference with President Hindenburg held before the election, to participate in a coalition provided they did not receive a clear majority. They are demanding a great deal more, but it may safely be assumed that there is considerable difference between what they demand and what they expect. At the time this is written, there is a two-week period of meditation and silence during which all party meetings and political speeches are proscribed by presidential decree. Naturally enough, the period is an excellent time for the growth and spread of rumors. At one time, Hitler is reported in Berlin demanding of Chancellor von Papen complete control of the government, and almost at the same time he is reported making secret overtures to other party leaders somewhere in Bavaria. The present demand of the Hitlerites that they be given complete control of the government is based on the theory that the Communists are traitors and outlaws and not entitled to representation in the Reichstag. With the Communist representatives out of the Reichstag, the National Socialists and Nationalists would have a majority. An alternative demand of the Hitlerites is that they be given the chancellorship and the ministry of the interior, that the Hitler storm troops be armed and made official, and that the Communists be outlawed. Von Papen, it is believed, is willing to give some posts to the Hitlerites, but he is not at all disposed to accede to their other demands.

Hitler feels that by participation in a coalition government the advantages which come from ceaseless agitation against the government from without will be lost. He also feels that participation means compromise, and that compromise is fatal to the extremist cause. Furthermore, Hitler has become accustomed to playing the great leading rôle; he not only has been the main show, he has been the only show. Sharing of honors has been foreign to him. Yet if he fails to participate in a government, he may disappoint leaders in his own group who are not averse to the honors that go with holding public office, and who feel that it is a case of stepping into official places now or never.

The gains made by the Communists were larger than Communist leaders themselves expected. The National Socialists had spent a great deal of time and energy in attempting to cut down the Communist strength; the size of the Communist vote, therefore, was a keen disappointment to Hitler and his followers. Economic conditions, the cutting down of unemployment relief, and defections from the Social Democrats in the industrial centers all contributed to the growth of the extreme left wing in the Reichstag. The Nazis are now pointing to the growth of the Communist vote as a reason for the suppression of the Communist party.

Another feature of the election was the losses sustained by the moderate parties of the Right. These parties lost heavily to the National Socialists. The result is that for the present Germany finds herself with six major parties instead of ten. It is a matter of considerable speculation at the moment where the representatives of the minor parties will throw their strength.

The Social Democrats constitute the second largest group in the Reichstag. They expected a greater punishment than they received, and are, therefore, thankful. During the campaign they were held responsible for all the mistakes and failures since the founding of the Republic. Despite the attacks from Right and Left and the hostility of the von Papen régime, the Social Democrats made an effective appeal on the issue of dictatorship which the National Socialists and the Communists offered.² A coalition of the parties of the Left—the Social Democrats and the Communists—is recognized as out of the question. Even if such a combination were possible, a majority would be lacking without the support of the Center, which could not be obtained under any circumstances.

The Center party gained about the same number of votes that the Social Democrats lost. This group not only held its own, despite the efforts

² One Social Democratic poster pictured a workingman impaled on the points of a golden crown worn by an aristocrat.

of the Nazis to show that it was condemned as a danger to Germany by Pope Leo XIII, but received thousands of votes from moderately conservative Protestants. The party made a strong bid for moderate support from all classes, pointing out the bitter class animosities aroused by Hitlerites and Communists and the imminent danger of dictatorship. A determined effort was made by the Hitlerites to cut down the strength of the Center party's ally, the Bavarian People's party, but without success. Earlier appeals of Hitler leaders to the Prussian "Nordics" to keep dominion over the "Bavarian pack" were posted from one end of Bavaria to another. To the Bavarians, the dictatorship of Hitler meant the dictatorship of Prussia. The election has placed the Center-Bavarian People's party combination in as strong a position as it has ever occupied. It has increased its representation; it stands in a position where Right or Left must have its support in order to rule. Hitler says that he will make no bargains with "Der Schwindler Breuning," but everyone knows that this is the usual party talk. The National Socialists could form the next government of the Reich with the consent of the Center party.

The position of von Papen, backed by the powerful von Schleicher and the army, seems to be stronger as a result of the election. Von Papen and his "cabinet of barons" represents middle-class business interests as they have not been represented since the formation of the Reich. These interests are united as never before. One has only to read von Papen's speeches on taking the government out of business to realize how well he represents this class. He will seek to perpetuate his administration on the ground that Germans desire a political moratorium—stability, law, and order. His latest utterance is that his government seeks to allow the German people to follow the old maxim, "Live and let live." His appeal for unity among all Germans is a great deal like that of Hindenburg since he first assumed the presidency. There has been plenty of strife and bloodshed; there has been ceaseless noise. The political bill posters have been covered with the words "Lügen" and "Lügner." Von Papen believes that the German people want a respite from all this.

No party has a majority in the Reichstag. What would be more natural than that the non-partisan cabinet of von Papen should continue in office in order to insure stability and peace? Von Papen will attempt to remain in office with the support of the Right and the Center. There are some observers of German politics who believe that even if he fails to secure the approval of the Reichstag he will continue in office, adjourn Parliament, and govern as Bismarck governed under somewhat similar circumstances.

No one takes seriously the possibility of the return of the monarchy. The only former royal family that has an enthusiastic following is the

Wittelsbach of Bavaria—but the following is all in Bavaria. No one supposes that Protestant Germany would be willing to accept the former Bavarian royal house, which has always been loyally Catholic. Charges have been made that the Nationalists and Hitlerites have been in constant communication with the Hohenzollerns with a view to restoring them to power. Perhaps the leaders have been in communication with the Hohenzollerns, but it is questionable if any serious-minded person believes that Hitler is out to advance the interests of anyone other than himself. Furthermore, there is no overwhelming sentiment for the return of the Hohenzollerns in Germany. Von Papen handles the monarchist question as many an American politician has handled prohibition when he says: "I am a monarchist; but the return of the monarchy is not an issue now. Our primary problems are economic."

In general, the election turned out as practically all observers of German conditions expected. The questions now to be answered are: Will von Papen hold on as chancellor? Will Hitler insist upon all power or some? Where will the Center party throw its strength, or which group will it tolerate? Will von Hindenburg continue his support of von Papen, whose action in ousting the government of Prussia thoroughly aroused the other German states and antagonized the Prussian leaders of the Center party, or will he insist upon a recognition of the National Socialists as the dominant, and therefore the logical, governing party of the Reich?

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Elections in Soviet Russia. The representativeness of the Soviet system of government can best be ascertained, not through abstract inquiry into constitutional provisions, but by means of an analysis of the electorate and of the elected. Only in this way can the contentions of Soviet apologists and theoreticians be given an adequate test of reality. Simultaneously, such data should disclose a number of sociological and psychological implications. A recent publication of the Central Electoral Commission of the Presidium of the Central Executive Committee of the U.S.S.R. gives a comprehensive view of the electorate and of the elected in the elections of soviets held in the year 1931.¹ The statistics of the electoral campaign were gathered at the places of election and forwarded to the Electoral Commission. The available totals do not cover all of the soviets,

¹ *Tsentral'naia izbiratel'naia komissia presidiuma TSIK SSSR. Vybory v sovery i sostav organov vlasti v SSSR v 1931 g.* (Central Electoral Commission of the Presidium of the Central Executive Committee of the U.S.S.R. Elections to Soviets and Composition of the Organs of Government in U.S.S.R. in 1931). All the data in the present article were taken from this publication.

but they give information as to 80 to 90 per cent of the administrative units. The samples thus obtained give us sufficient ground for generalizing.

The Soviet state is a class state. In accordance with this principle, a certain number of individuals of voting age are disfranchised. At the time of the 1931 elections, 3.9 per cent of adults eighteen years old or over were disfranchised. The corresponding proportion of disfranchised voters in the 1929 elections was 4.9 per cent. This drop was more accentuated in the cities, where during the two-year period the per cent of disfranchised fell from 8.5 to 4.9, while in the rural districts it declined from 4.1 to 3.7 per cent. In part, this change may be ascribed to the evolution of economic relationships under the influence of the Five Year Plan. A number of former petty traders and businessmen have changed their former occupations for "socially useful" pursuits, thus gaining the right to vote. A recent decree of the Central Executive Committee gave the right to vote to persons who, having reached the voting age since 1925, were engaged in "socially useful" occupations at the time of the elections and whose parents were disfranchised. A number of former police officials died and the clergy declined in numbers. The composition of the disfranchised groups was as follows in 1931:

	<i>Per cent in the cities</i>	<i>Per cent in the country</i>
Employers of hired labor	5.3	22.2
Living on unearned incomes	8.3	5.9
Tradesmen and middlemen	39.9	10.1
Clergy	4.9	6.8
Former agents of the police, etc.	3.2	4.7
Disfranchised by the courts	8.8	5.4
Feebleminded and morons	1.2	1.5
Dependents over 18 years old of the above mentioned groups	28.4	43.4
	<u>100.0</u>	<u>100.0</u>

An active campaign was conducted preliminary to the elections. Its purpose was to examine the work of the outgoing soviets, to acquaint the electorate with the issues in hand, and to reduce absenteeism. When the elections came off, 70.4 per cent of the voters in the rural districts cast their vote, 79.6 per cent in the cities. On the whole, the city groups organized in trade unions voted in greater proportion than the unorganized groups. The most active voting group in the country districts besides the rural intelligentsia, who form but a small portion of the rural district population, was the "collectivized" peasants; less active were the poorer groups among "individualist" peasants and workers; the least

active was the group of voters formed by the "middle" peasants. Comparison of the election of 1929 with that of 1931 shows increased activity among all the social strata in the rural districts.

The relative political consciousness of the sexes is demonstrated by the election returns. Despite attempts to get the feminine vote, men seem to predominate among the voters. While 78 per cent of the male voters in the country districts cast their votes, only 63.4 per cent of the women voters did so. In the cities, among the groups organized in trade unions the proportion of women who voted nearly equalled that of men, and even slightly exceeded the male percentage in the territory of the R.S.F.S.R. The women voters among the city groups unorganized in trade unions lagged behind in proportion to the number of male voters. The decrease in feminine absenteeism is greater during the last two years (1929-31) than that of male voters, and may serve as an indication that women will ultimately reach the same degree of political maturity as men.

The structure of the Soviet government is pyramidal; that is to say, each lower representative unit of government (soviet) elects delegates to a higher unit. It is asserted by some that such a system, coupled with occupational representation, compels the voter to exercise his judgment to its utmost, because the same delegates that he is electing to the lower soviet have a chance to represent him in the highest organs of government.² However, if we examine the constitutional provisions of the Soviet Union we find that not every delegate has the same chance to be elected to the highest organ of government—the All-Union Congress of Soviets. While the constitution allows to the rural districts one representative per 125,000 *inhabitants*, the cities enjoy the privilege of sending one delegate per 25,000 *electors*.³

The progression of elections from lower to higher soviets is not uniform over the whole territory of the U.S.S.R. A recent change in the territorial divisions of the Soviet Union somewhat altered the method of election to the All-Union Congress of Soviets. The rural soviets elect representatives to the district congress, which in its turn elects delegates to the regional or provincial congresses. The urban soviets elect their deputies directly to the latter. The regional or provincial congresses, in turn, elect delegates to the congress of soviets of the various constituent republics, as well as, with a few exceptions, to the All-Union Congress of Soviets. Only in the cases of the smaller republics, which do not have regional or provincial divisions, are the delegates to the All-Union Congress elected directly by the republican congresses. Finally,

² *Entsiklopediia prava i gosudarstva* (Encyclopedia of Law and State), II, 68.

³ Constitution of U.S.S.R. as amended by the Sixth All-Union Congress of Soviets, Art. 9.

the delegates to the Union Congress are elected at the congresses of soviets of the republics of Azerbedjan, Georgia, and Armenia, and at the congresses of soviets of the various autonomous republics and provinces, whether or not these form parts of regional or provincial units.*

One out of every 41 voters in the country districts was elected to a rural soviet. The total membership approximated one million and a half, of which non-party members formed 78.8 per cent. The remaining seats were divided between the members of, or candidates to, the Young Communist League, who composed 6.4 per cent of the membership, and the members of, or candidates to, the Communist party, who occupied 14.8 per cent of the seats. Though the Communist organizations were in minority, they were able to win 59 per cent of the chairmanships of the rural soviets for the Communist party at the expense of non-party members, who were elected to only 35.6 per cent of the chairmanships. The Young Communist League saw its members elected in 5.4 per cent of the cases.

One out of every 118 voters was elected to the city soviets, which boast a total membership of approximately 150,000. About half of the membership consisted of either members of, or candidates to, the Communist party (49.5 per cent). The members of, and the candidates to, the Young Communist League formed seven per cent of the membership, while non-party members formed the remaining 43.5 per cent. As in the rural districts, the Communist party members of the city soviets gained heavily in the elections of the chairmen, by obtaining 95.5 per cent of the seats, leaving 1.4 per cent to the Young Communist League and 3.1 per cent to the non-party members.

Passing over the various steps in the election of the All-Union Congress of Soviets, we find that in the latter the membership of the Communist party amounted to 73.1 per cent. The Young Communist League was represented by 2.2 per cent. The remaining 24.7 per cent of the seats were occupied by non-party members. A gain for the Communist party membership was shown in the Central Executive Committee of the Union, subdivided as follows: Communist party members, 79.9 per cent; Young Communist League members, one per cent; non-party members, 19.1 per cent.

On the whole, we find that the Communist party, through a series of elections, gains considerably. This fact carries additional importance when we remember that the rural districts, which contain the majority of the population of the Soviet Union, in electing their delegates choose four non-party members per every member of the Communist party or of the Young Communist League.

* *Ibid.*, Art. 10.

Sifted through a range of electoral mills, the social composition of originally elected rural and urban soviets underwent a considerable change. In the rural soviets, the peasants formed 86.7 per cent of the total membership. The remaining delegates were workers (7.4 per cent), employees (4.8 per cent), members of the Red Army, handicraftsmen, etc. (1.1 per cent). Among the chairmen of the village soviets, we find a proportional decrease in the number of peasants to 79.3 per cent and a corresponding increase in the number of workers to 15.4 per cent, while the employee group of 4.7 per cent of the chairmanships remained practically unchanged. The remaining 0.6 per cent were composed of the representatives of all other groups of the eligible rural population.

In the city soviets, more than half of the membership were workers (56.5 per cent), while the next largest group of 20 per cent was composed of employees. The peasants formed only 7.9 per cent of the membership. The remainder was composed of housewives (7 per cent), students (2 per cent), handicraftsmen (2.2 per cent), Red Army members (3.7 per cent), and others (0.7 per cent). The workers gained considerably in the elections of the chairmen, and obtained 79.4 per cent of the seats. They were followed by the employee group, with 11.6 per cent and the peasants with 8.0 per cent, leaving but one per cent of the places to the others.

In the Sixth All-Union Congress of Soviets, the workers comprised 54.4 per cent of the membership. The rest of the seats were divided between the employees and the peasants, with 20 and 25.6 per cent of the total membership, respectively. The Central Executive Committee consisted of 47.6 per cent of workers, 36.1 per cent of employees, and 16.3 per cent of peasants. The employee group was thus increased at the expense of the peasants and workers.

Rural population is discriminated against in favor of the city voters. The soviet authorities do not deny the fact, although they minimize its extent. The Soviet constitution, with its norms of representation, cannot be the sole test of the weights of the two groups of population. This can be found only by analyzing the class constituency of the All-Union Congress of Soviets. A number of delegates from the rural districts did not attend because the spring sowing campaign was under way, and because they "felt that their presence was more urgently required in their own districts."⁵ For every peasant representative in the Union Congress, there were, speaking roughly, three worker or employee representatives. However, for every worker and employee voter there were approximately four peasant votes. Assuming that representation is divided on class lines between the peasants on one side and the workers and em-

⁵ "Sixth Congress of Soviets," in *Soviet Union Review*, April, 1931, p. 84.

ployees on the other, it appears that the vote of every worker or employee carries approximately twelve times the weight of each peasant vote—a proportion one would not suspect from a mere reading of the Union constitution.

The psychology of the voters is revealed by the predominance of men over women among the delegates to the rural and city soviets. Women composed but 21 per cent of the membership of the rural soviets, as compared with 25.9 per cent of the city soviets. The membership of these soviets seems definitely to prefer men for the post of chairman, since women were elected to only 5 per cent of these posts in the rural districts and 5.5 per cent in the cities. Of the membership of the Sixth All-Union Congress, women formed 20.4 per cent, as compared to the 15.7 per cent in the Central Executive Committee.

Of the total membership of the rural soviets, 56.4 per cent were elected for the first time, as compared with 36.6 per cent of the chairmen thus elected. In the city soviets, these groups were composed, respectively, of 60.2 per cent of the delegates at large and 23.4 per cent of the chairmen. The newly-elected to the All-Union Congress formed 72.1 per cent of its membership. It is a policy of the government to bring new blood into the soviets with each successive election.⁶ In this effort it seems to have succeeded.

A number of delegates were illiterate. The highest proportion of such was found in the rural soviets, where the number reached 12.9 per cent. Of the chairmen of rural soviets, 3.8 per cent could not read. The city soviets had a much smaller number of illiterates, i.e., 2.9 per cent of the membership and 0.4 per cent of the chairmen. The membership of the Sixth All-Union Congress contained only 2.1 per cent of illiterates; and illiteracy in the membership of the Central Executive Committee was still further reduced to 1.7 per cent.

LAZARE TEPER.

The Johns Hopkins University.

⁶ S. N. Harper, *Civic Training in Soviet Russia*, p. 122.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The committee on program announces that at the twenty-ninth annual meeting of the American Political Science Association, to be held at the Hotel Statler, Detroit, on December 28-30, round-table meetings will take place during the forenoons as follows: (1) Legislative Methods, Frederic H. Guild, University of Kansas; (2) Public Administration, Frank M. Stewart, University of Texas; (3) Public Law, Oliver P. Field, University of Minnesota; (4) Public Opinion and Political Parties, Thomas S. Barclay, Stanford University; (5) Political Theory, Walter J. Shepard, Ohio State University. Section meetings, to be held in the afternoons, will be as follows: (1) Comparative Government, Walter R. Sharp, University of Wisconsin; (2) Judicial Administration, Robert E. Cushman, Cornell University; (3) International Relations, Frederick A. Middlebush, University of Missouri; (4) Local Government, John F. Sly, University of West Virginia; (5) Government and Education, Earl W. Crecraft, University of Akron; (6) Political Aspects of the New South, Robert Rankin, Duke University. In accordance with the recent policy of the Association, the round table meetings will stress discussion on selected topics and the section meetings will be devoted to formal papers and discussions thereof. Members of the Association interested in any of the round table or section meetings are invited to communicate with the respective chairmen. The luncheon meetings will be devoted largely to the affairs of the Association, reports of officers and committees, and reports on round table and section meetings. Dr. W. F. Willoughby's presidential address will be delivered on the evening of the second day. Complete announcement of the program will be mailed to the membership late in November.

Professor Lindsay Rogers, of Columbia University, gave the Page-Barbour lectures at the University of Virginia in May on the subject of "Crisis Government."

Dr. Kenneth O. Warner, of the University of Arkansas, was a member of Governor Parnell's state government reorganization committee which drew up initiative measures for submission at the November election.

Dr. William A. Robson, of the London School of Economics and Political Science, will be a visiting professor at the University of Chicago during the spring quarter.

Professor James K. Pollock, of the University of Michigan, spent the summer abroad, devoting attention particularly to German politics. His courses were given in the summer session at Michigan by Professor Roger H. Wells, of Bryn Mawr College.

Professor Harold S. Quigley, of the University of Minnesota, gave courses at the University of Chicago during the second half of the summer quarter, and in addition a series of four public lectures on traditionalism vs. liberalism in contemporary Japanese politics.

Professor Raymond Moley, of Columbia University, is acting as research director to the Roosevelt Business and Professional League. Among his assistants are Professors A. A. Berle, Jr. and Rexford G. Tugwell, also of Columbia. He accompanied Governor Roosevelt on his western speaking trip in September.

Professor Marshall E. Dimock, of the University of California at Los Angeles, is spending the academic year in research in Europe and at its close will assume an associate professorship of public administration at the University of Chicago.

Professor Orren C. Hormell, of Bowdoin College, is spending a sabbatical year in Europe and is engaged in a study of public utility administration in England, France, Italy, and other countries.

Dr. David W. Knepper, of Mississippi State College for Women, gave courses in diplomatic history and comparative government at George Peabody College, Nashville, Tenn., during the summer session.

At the annual meeting of the Social Science Research Council held at Franconia, New Hampshire, in September, Dean Walter J. Shepard, of Ohio State University, was appointed a member of the committee on grants in aid and Professor Walter R. Sharp, of the University of Wisconsin, was made a member of the committee on general research fellowships.

Dr. Arnold B. Hall, who some months ago resigned the presidency of the University of Oregon, has been appointed director of the Institute for Government Research of the Brookings Institution at Washington, D.C.

Professor Jesse S. Reeves, of the University of Michigan, attended a meeting of the executive committee of the American Institute of International Law held at Oslo, Norway, in August.

Mr. James H. Sheldon, nearing completion of his graduate work at Harvard University, has been appointed visiting assistant professor of United States citizenship under the Maxwell Foundation at Boston University. The post was left vacant some time ago by the resignation of Dr. Frederick A. Cleveland.

Dr. Paul K. Walp has resigned his assistant professorship at the University of Kentucky to accept a professorship of political science in the Teachers College at Superior, Wisconsin.

Professors Walter R. Sharp and John T. Salter have resumed teaching at the University of Wisconsin after leaves of absence. The former has served for three years as fellowships and grants-in-aid secretary of the Social Science Research Council, and the latter spent the past year in research in Philadelphia on ward leaders.

Professor Irvin Stewart, chairman of the department of government in the Graduate School of the American University, is serving as a delegate to the fourth International Radio Conference which convened at Madrid on September 3. Professor Stewart was also appointed a representative of the United States to the International Telegraph Conference which convened simultaneously with the Radio Conference.

The committee on award of the annual Baldwin prize, offered by the National Municipal League, has accorded first honors to Mr. Norman N. Gill, of the University of Chicago, for an essay entitled, "The Manager Plan for Counties."

The Southern Political Science Association will meet at Atlanta on November 25 and 26. Dr. George Sherrill, of Clemson College, is president; Dr. Harriett Elliott, of North Carolina College for Women, secretary; and Professor David W. Knepper, of Mississippi State College for Women, treasurer.

The annual meeting of the American Municipal Association will be held in Chicago on November 10, 11, and 12. The Association will use the facilities of the University of Chicago.

The recommendations of the Citizens Police Committee of Chicago which were published in a recent volume entitled *Chicago Police Problems* have now been largely made effective under the administration of Commissioner James P. Allman. Mr. Bruce Smith and his staff have been advising the police department on its reorganization during the past year.

An international congress on comparative law, meeting at The Hague in August under the auspices of the Academy of Comparative Law, was attended by some 270 delegates, including sixty Americans.

A plan for reclassification of the 2,500 employees of Westchester county, New York, on a merit basis, as prepared by Mr. Fred Telford of Chicago, was adopted by the county board of supervisors on September 12 and will become operative after approval by the state civil service commission and after being included in the 1933 budget.

The University of Chicago has announced a grant of \$25,000 a year for a period of five years for research and training in public administration. The fund will be administered through the department of political science.

The thirty-eighth annual meeting of the National Municipal League was held at Washington, D.C., on September 19-21. The opening address by the president, ex-Mayor Murray Seasongood of Cincinnati, was on the subject of "Paying for Local Government during Depression," and throughout the program emphasis was placed on "depression" government and administration.

The Proportional Representation League has merged its activities with those of the National Municipal League, and beginning last June, a new department of the *National Municipal Review* is presenting news notes on the movement which previously appeared in the *Proportional Representation Review*. The department is edited by Mr. George H. Hallett, Jr. A committee on proportional representation, appointed by President Murray Seasongood of the National Municipal League from the membership of the two organizations, is under the chairmanship of Mr. C. G. Hoag of Haverford, Pennsylvania.

A conference on municipal government and administration in metropolitan areas, including city planning, was held at New York University on October 18-19. The National Municipal League, the National Conference on City Planning, the New York Regional Plan Association, and the Regional Planning Federation of the Philadelphia Tri-State District coöperated with the University, and emphasis was placed mainly upon problems existing in New York, New Jersey, Connecticut, Pennsylvania, and Delaware. The University has also announced for December a national conference on taxation, readjustment of governmental expenditures, and problems of public credit.

It is planned to continue next summer the series of seminars for teachers of international law held at the University of Michigan during the past summer. The series as conducted on this recent occasion included: (1) The Classics of International Law, Dr. James Brown Scott, Carnegie Endowment for International Peace; (2) Bibliography of International Law, International Law and the Constitution, Codification of International Law with respect to Territorial Waters, and Competence of Courts with regard to Foreign States, George Grafton Wilson, Harvard University; (3) The Technique of Codification of International Law, and Codification of International Law, with Special Reference to Diplomatic Privileges and Immunities, Jesse S. Reeves, University of Michigan; (4) The Interpretation and Application of International Law in Anglo-American Countries, Edwin D. Dickinson, University of Michigan; and (5) The Modern Sources of International Law, George A. Finch, managing editor of the *American Journal of International Law*.

At its last session, the senate of the state of New Jersey refused to act on the suggestion of Governor A. Harry Moore that the state government be reorganized on the lines of the New York state reorganization a few years ago. With a view to reviving the project, the governor, during the past summer, invited Princeton University to plan and carry out an investigation of the state government, primarily as a means of bringing to light the best methods of reducing expenditures in the fiscal year 1933-34. The invitation has been accepted by Acting President Duffield and the work entrusted to the School of Public and International Affairs. The survey will be directed by Professor Harold W. Dodds.

Dr. Graham Wallas, emeritus professor of political science in the University of London, died on August 10 at the age of seventy-four. His long career affords an inspiring example of scholarship and public service. From 1904 to 1907, he was a member of the London County Council; in 1912-15, he served on the Macdonnell commission on civil service; for several years, he was chairman of the school management committee of the London School Board. His numerous books included *Human Nature in Politics*, *The Great Society*, *Our Social Heritage*, and *The Art of Thought*. Visiting the United States on several occasions, he delivered a series of Lowell lectures in Boston in 1914, the Dodge lectures at Yale in 1919, and a series at the Williamstown Institute of Politics in 1926. Dr. Wallas was an outstanding advocate of and leader in the development of more scientific methods in government and the study thereof, and his deepest satisfaction was found in teaching young men destined for politics and the civil service.

The post-election radio program of the American Political Science Association, arranged by the Committee on Policy in conjunction with the National Advisory Council on Radio in Education, will deal, to the end of the year, with "Constructive Economy in State and Local Government." Topics and speakers will be as follows:

- (1) November 15, "Retrenching in State and Local Expenditures, A General View," Murray Seasongood, Cincinnati, Ohio; A. R. Hatton, Northwestern University.
- (2) November 22, "Redrawing the Boundaries of Local Government," Thomas H. Reed, University of Michigan; Howard P. Jones, National Municipal League; George S. Counts, Columbia University.
- (3) November 29, "Redistributing Functions of State and Local Government," Paul W. Wager, University of North Carolina; O. Max Gardner, Governor of North Carolina; Harry F. Byrd, Ex-Governor of Virginia.
- (4) December 6, "Reorganizing County Government," Arthur W. Bromage, University of Michigan; Leonard D. White, University of Chicago; Lent D. Upson, Detroit Bureau of Governmental Research.
- (5) December 13, "Reforming Financial Methods," Luther Gulick, Institute of Public Administration; Harley L. Lutz, Princeton University; Russell Forbes, National Municipal League.
- (6) December 20, "Reducing and Limiting Local Indebtedness," Carl H. Chatters, Municipal Finance Officers' Association; C. E. Rightor, Detroit Bureau of Governmental Research; Henry Hart, Municipal Advisory Council of Michigan.
- (7) December 27, "Revising Our State and Local Tax System," W. F. Willoughby, Washington, D.C.; William Anderson, University of Minnesota; Isidor Loeb, Washington University.

BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

Legislative Regulation. By ERNST FREUND. (New York: The Commonwealth Fund. 1932. Pp. xvi, 458.)

Professor Freund is the first of the teachers of legislative law in American law schools, and the soundness of his insistence on the importance of the teaching of his subject is evidenced by the many courses in legislation now given in the more important of these schools. This is in itself a service not only to the preparation of members of the bar and of the bench, but also to the improvement of the statute law with which they are called upon increasingly to deal. Professor Freund is, however, not solely a teacher; he has been a practitioner in the public interest, a draftsman of statutes. Notably, he has been for many years, and still is, a member of the Conference of Commissioners on Uniform State Laws, and has had a hand in the shaping of the important body of commercial law which has issued from the Conference.

The book under review is obviously the product of a long period of experience and study. It collects and organizes an astonishing variety of material on legislative regulation, principally, of course, American statute and case precedents, but in addition wide citation of German and English instances, which evidence Professor Freund's broad acquaintance with the legislation of those two jurisdictions.

The book will be of value not only, as is said in the preface, "to those concerned with the function and tasks of legislation," but also to students of political science as evidencing the serious problems that confront the expression of the legislative will and the rendering it able to run successfully the gauntlet of lawyers, of police and administrative officers, and of the courts which faces each little legislative bill as it issues from the head of the legislative Minerva.

Professor Freund begins his book with an interesting discussion of written and unwritten law. He makes an important distinction between the declaratory rule, "a rule of decision, . . . the expression of justice, and, as such claiming rational validity," and the regulative rule as "an expression of government in the nature of a rule of conduct" (p. 4). He shows what is so frequently overlooked in this country, that "the difference in flexibility between the written and unwritten law is apt to be greatly over-estimated," that in fact the rules of the unwritten law are "often accepted as settled with a rigidity hardly inferior to that of an imperative statute," and second, that a statute, and especially a code,

may be made flexible. As the result of wide experience, the reviewer would emphasize the statement of Professor Freund that it is not fully realized "that the process of elaborating law in view of new combinations of circumstances which place the application of existing law in controversy is essentially the same whether we start from a statutory text or from a common law principle" (p. 14).

Giving the judicial process due consideration for its flexibility in adapting rules of law to changing conditions, Professor Freund establishes the place of the statute by saying that "the judicial process cannot produce the rule that is regulative in character," citing notably the case of crimes (pp. 7, 11).

The bulk of the book is taken up with a study of the technique and terms of legislation. Every draftsman has experienced the primary difficulty of finding language acceptable to the legislature, but which will nevertheless "bear in mind the various classes of persons to whom the statute is addressed" (p. 159). The reviewer would say that the first difficulty is to find language which will clearly express the intent of the proponents and effectuate it; and how much close care this means the whole book will show, as for example, paragraphs 48 and 49.

"Nearly every statute aims to accomplish a definite purpose" (p. 220). The first thing that must be decided is what the legislative purpose is, since a lack of care in thinking through that purpose may cause a looseness of expression which makes the statute unconstitutional or unenforceable. The author makes the interesting point in respect to method of accomplishment that a regulatory statute may be enforceable in a civil suit whereas similar language would make the criminal sanction difficult to apply, citing the greater success of the federal anti-trust laws, operated through equity procedure, as compared with the state anti-trust laws (pp. 237, 242). This is an example of the kind of aids to draftsmen with which the book abounds.

It is obviously impossible in a short review to discuss the individual points made by Professor Freund, with most of which the reviewer is in entire agreement, though he ventures to differ as to the importance of the severability clause. The severability clause, particularly that used in acts of Congress (p. 155), should be adopted only where it really expresses the considered intent of the proponents of the legislation. But in view of the great uncertainty as to what the Supreme Court will permit the legislatures to do in respect to very many fields of regulation, some degree of notice must be given to the Court that the legislature desires the act to be effective within whatever may be the constitutional limits, unknown to anyone until the pronouncement of the Court has been made. The severability clause has recently been held as aiding the Court to in-

interpret an act of Congress [Crowell v. Benson, 52 Sup. Ct. Rep. 285 (1932)]. The clause cannot authorize the Court to engraft upon a statute an exception or other provision, or entirely to change its language (p. 155), and the last word is always with the judges as to whether the particular provision in question is severable.

The reviewer hopes that Professor Freund may find the leisure to add to the service which he has done students and draftsmen of legislation by writing another volume on the procedure of legislatures and their equipment for and method of adjusting regulations of society to new conditions (p. 8).

J. P. CHAMBERLAIN.

Columbia University.

Politica Methodice Digesta of Johannes Althusius (Althaus). WITH AN INTRODUCTION BY CARL JOACHIM FRIEDRICH. (Cambridge: Harvard University Press. 1932. Pp. cxi, 436.)

Professor Friedrich and the Harvard University Press are to be congratulated on having made available the text of Althusius' *Politics*, which of necessity has been known to most American scholars only through Gierke's monograph. The text is reprinted from the third edition of 1614, with the addition of the preface from the first edition and twenty-one hitherto unpublished letters. The text of the *Politics*, however, is not complete, 269 sections (out of 2,277) being omitted in whole or part as repetitions or made up chiefly of excerpts and citations. Professor Friedrich has written a rather lengthy introduction giving a biographical sketch of Althusius, an account of the literary sources which he mainly used, and an analysis of his conception of the *consociatio symbiotica*. Besides a revised index, there is a list of authors cited, with bibliographical information. This list, however, is not an index, since the places of citation in the *Politics* are not given. I have happened to note the omission of the *Defensor Pacis*, which is cited in c. 28, 32.

Any treatment of Althusius necessarily challenges comparison with Gierke's work. Professor Friedrich's introduction is not intended to supplant Gierke but to supplement him by emphasizing another and, in Professor Friedrich's judgment, a more important aspect of Althusius' political theory. The thesis is that Gierke over-emphasized the legal phases of Althusius' thought, identifying politics with public law, to the neglect of the sociological and, in general, the scientific implications of the *consociatio* (pp. lxiii f.). For this reason, Gierke is said to have attached too much importance to the compact, which Professor Friedrich thinks plays a minor rôle (p. lxxxvii), and to have overlooked the implicit absolutism of Althusius' state, which Gierke is said to have "dissolved into a net-

work of contractual obligations" (p. lxxxv). For Professor Friedrich, the most significant feature of Althusius' theory is the implied "naturalism" of the *consociatio*, which enabled him to present "political phenomena as essentially natural, biological, and psychological" (p. xciii). The law of nature, as conceived in terms of reason and justice, "is not a predominant aspect of Althusius' thought" (p. xevii). "It sounds as if Althusius were heralding Hobbes, Spinoza, Locke, and Rousseau when we hear him announce: '*Quod Deus est in universo, lex est in societate*'" (p. xcix).

Without pretending to have made a careful study of Althusius' text, the reviewer feels that Professor Friedrich has greatly overstated his case. He starts from the suggestive but dangerous generalization of Max Weber connecting Calvinism with capitalism, but he gives this a turn not directly countenanced by Weber. "Biological naturalism and determinism root in the Calvinist conception of God" (p. lxxiii), the reason being, apparently, that both deny the freedom of the will. Accordingly, Althusius' *consociatio* emphasizes "a biological basis of communal life" (pp. lxviii ff.). Such a use of terms would be seriously misleading, even if the history presumed were unexceptionable. In point of fact, when a mechanistic theory of nature appeared in the course of the seventeenth century, it had not the remotest connection with predestination, whatever influence the latter may have had upon Protestant morals. Professor Friedrich stresses the fact that he has not found the Latin form *symbioticus* before Althusius (pp. lxvi f.). But even if he first made "systematic" use of the word, his linguistic originality extended to putting an adjectival ending on a not uncommon Greek word which in any case had no biological connotation. Since Althusius seems to have made a point of giving Greek equivalents, it is unlikely that the use of the word was very important.

In emphasizing the difference between his interpretation and Gierke's, Professor Friedrich under-estimates the importance of the fact that, in the Ciceronian and legal tradition, the founding of law upon a common life had been for centuries a commonplace. Hence the expression *Quod Deus*, etc., quoted above, does not on its face mean that God had become an impersonal natural force. In using a practically identical expression (c. 10, 8), Althusius refers to Plato's *Laws* and Aristotle's *Politics*; in c. 21, 17, he quotes Aristotle's similar phrase at 1287 a 28. The comparison of the ruler to a physician, which Professor Friedrich regards as evidence that Althusius was pragmatic and utilitarian (p. lxxxix), must be one of the commonest figures of speech in political philosophy. The expression *ex jure justitia*, which Professor Friedrich calls "Hobbesian" (p. lxxix), has in fact exactly the opposite connotation. The first book of Cicero's *De Legibus* has numerous similar expressions, e. g., *a lege ducendum est iuris*

exordium (1, 19). If Althusius had wished to say, like Hobbes, that the positive law makes right, he would hardly have quoted (as he does, c. 21, 17) the famous *legum servi* from *pro Cluentio* (146) or *Romans* 3, 20: *per legem est cognitio boni et mali*. Similarly, Professor Friedrich surely misrepresents Althusius' intention when he says that the Decalogue, and presumably natural law in general, does "not stand in the way of an absolute and potentially all-inclusive, universal community" (p. xevi). Althusius limits the right of the state to take private property to cases of evident public need (c. 11, 25), as the lawyers usually did (Gierke, pp. 269-272). His account of natural law as an innate inclination toward justice, and of the civil law as its *ancilla*, seems precisely in the tradition (c. 21, 19-20, 30). If I were to venture a suggestion, it would be that he is farthest from the tradition in the stress which he puts upon the *will* of God (c. 21, 16, 18); if so, it is hard to see how this helped to abolish the antithesis of nature and reason, which Professor Friedrich supposes to be the great vice of mediaeval philosophy (pp. lxxv f.).

It is distressing that a book should have been issued on a scale so elaborate and costly without submitting it to adequate proof-reading. The introduction contains numerous misspellings and inconsistencies in punctuating, capitalizing, and italicising, with some lapses into down-right slang. The fact that the volume was printed in Germany and not proof-read in this country undoubtedly accounts for some of these defects. The Latin text appears to be printed accurately, though I have not had the original text for comparison.

GEORGE H. SABINE.

Cornell University.

God in Freedom: Studies in the Relation between Church and State.

By LUIGI LUZZATTI. Translated from the Italian by Alfonso Arbib-Costa. (New York: The Macmillan Company. 1930. Pp. 794.)

This translation of *Dio Nella Libertà*, which is a greatly expanded edition of the well-known original work, *La Libertà di Coscienza e di Scienza*, by the late professor of public law at the University of Rome, and one-time prime minister of Italy, presents the English reader with a miscellaneous but interesting collection of essays and comments on religious liberty and its application and misapplication. While in no way an attempt at a systematic treatment of the subject, as might be inferred from the English sub-title, its content as a whole gives a good account of the more conspicuous aspects of the struggle against religious disabilities. The approach is that of an impassioned lover of religious liberty in the broadest sense, i.e., the right of full freedom of faith and worship, either positive or negative, unattended by civil or political dis-

abilities. The author still felt the need of defending this right, and constantly took pen in hand to assail restrictions of any sort, e.g., the practices of Rumania. The general reader will find interesting reflections on the early precursors of religious liberty, on Buddhism, and on St. Francis of Assisi. Students of government will find interesting comments on the disestablishment of the Church of Scotland, on the evolution of Italy to a lay state, and on the constitutional character of the separation of church and state. The attitude of the Roman Church is given brief but critical treatment.

In preparing this English edition, after the author's death, the editors saw fit to append several chapters under the title of American Supplementary Chapters. Of these, it is worth mentioning the article by Max J. Kohler on the constitutional character of religious liberty in America and the article by Louis Marshall (completed by Kohler after the latter's death) on the protection of racial and religious minorities. The latter article should be of special interest in view of the close contact which the two authors had with the drafters of the minorities treaties.

M. W. ROYSE.

Cambridge, Mass.

Systematic Sociology. On the Basis of the *Beziehungslehre* and *Gebildelehre* of Leopold von Wiese. ADAPTED AND AMPLIFIED BY HOWARD BECKER. (New York: John Wiley. 1932. Pp. xxi, 772.)

Professor Becker's adaptation of von Wiese is an excellent example of international coöperation. He has given us more than a translation; it is the presentation in a guise more congenial to American readers of the work of one of the leaders of present-day German sociology. Sociology in Germany, springing from its own historical origins, has followed a course of development remarkably different from that of sociology in America. Each has antithetical contributions to make to the other. High credit is due to Professor Becker for making available to American readers the somewhat abstract but clear and penetrating thought of his former teacher.

Von Wiese's conception of the nature and province of sociology, as a specific non-normative science devoted to the study of inter-human relations, deserves careful attention. The kind of analysis he offers in the introductory chapters of the work is often dismissed by our pragmatic age as "mere" theorizing. But apart from competent theory sociology tends to lose itself in a trackless wilderness of research. Unlike most of our "general sociologies," von Wiese's work is no loose collection of sociological odds and ends, but a genuine system which coördinates and interprets the intricate, and often baffling, complex of social relations.

It would be out of place here to deal analytically with so comprehensive a work. We shall instead confine ourselves to the two (out of fifty) chapters in which the author offers his sociology of the state. This will suffice, however, to illustrate the manner in which he treats the various systems which form the structure of a modern society.

All of these systems are "plurality patterns" expressing and determining the relationships of human beings. In a material sense, they exist only as "neuropsychic organizations." The reality they possess is one which our own minds give to them, but that is itself a very potent reality. They dominate the minds of their creators, and the more powerful and permanent they are the less they seem to depend on the near tangible human beings. The highest degree of abstraction belongs to a category of "abstract collectivities," and of these the supreme example is the state.

The necessities and obstacles of social living create the various types of order and regulation which constitute the social structure. Just as the experience of sex evokes the family and the kin group, so does the experience of the difficulties arising from the desire of human beings to dominate one another evoke certain regulated forms of superordination and subordination. Thus the state comes into being. Habituation and indoctrination make it appear as a "brooding omnipresence in the sky" (Justice Holmes). For most human beings, it becomes "unintelligible, intangible, and mysteriously gigantic," the repository of superhuman values. It grows up with little conscious intent on the part of its members, or yet of the small groups who control its functioning. But it is, after all, an idea-framework in which various wishes and impulses seek for gratification in conformity with the established pattern. And while it is a necessary form of social order, "the abstract collectively known as the state affords quite as much opportunity for competition, contravention, and conflict, for differentiating and destructive processes, as it does for integrating, remodeling, and upbuilding processes" (p. 585).

In ordinary peaceful times, many groups—artists, scholars, business men, and above all women—are relatively unaware of the tremendous power of the state, or they think at most in terms of its non-characteristic functions, not of its basic activity, which is the maintenance of the internal and external *status quo* through the *ultima ratio* of force. Made rudely conscious of it, as in the World War, they find compensation "through complete and credulous devotion to the newly revealed 'superpersonal entity.'"

The task of controlling this vast system of dominance and submission to the human needs of changing situations is full of difficulty because of our acquired attitudes with regard to its might and because of the "inflexibility, harshness, rigorousness, and lack of imagination and sympathetic understanding peculiar to the zone of life most affected by

the political plurality pattern." This pattern affords special opportunities "for gratifying human self-seeking in disguised collectivistic ways," reinforced by the mind-controlling symbols of power and majesty which it has developed. The difficulty of abolishing the irrationality and absurdity of modern warfare is a signal instance. Some hope is engendered by the trend of the state to take on functions of an ameliorative character at variance with its traditional coercive regulation. But this trend has scarcely passed beyond the area of domestic affairs.

The treatment of the state here summarized affords an excellent touchstone for the sociological principles of the author. While it is generally in accord with the methodology he sets forth in his introduction, it raises one important critical inquiry. Von Wiese belongs to the group of German sociologists who maintain that ethical valuations must be always eschewed by the scientist. Yet, in spite of his protestations, the doubt arises whether they do not enter into his account of the state. If so, is this a human failing on his part, or is the claim of *Wertfreiheit* too simply and absolutely stated to meet the requirements of sociological analysis? Further examination is needed here if we are, on the one hand, to avoid the gross perils of evaluation and, on the other, to deal adequately with social realities which are themselves impregnated with value-elements and fraught with further value-potentialities.

R. M. MACIVER.

Columbia University.

Toward Soviet America. BY WILLIAM Z. FOSTER. (New York: Coward-McCann, Inc. 1932. Pp. viii, 343.)

Tough Luck—Hoover Again. BY JOHN L. HEATON. (New York: Vanguard Press. 1932. Pp. 94.)

The Socialist Cure for a Sick Society. BY NORMAN THOMAS. (New York: The John Day Company. 1932. Pp. 28.)

The Coming of a New Party. BY PAUL H. DOUGLAS. (New York: McGraw-Hill Book Company, Inc. 1932. Pp. viii, 236.)

What We Are About to Receive. BY JAY FRANKLIN. (New York: Covici-Friede. 1932. Pp. 243.)

These five books on current affairs are concerned not only with the present problem of political leadership and immediate policies, but likewise with the party alignment and the existing economic order. Sharply critical, these present-day pamphleteers are not content with discussing palliatives; they undertake an examination of the underlying social and economic bases of politics and raise pertinent questions as to whither this society is bound. Whatever one may think of the differing analyses hazarded or of the solutions offered, there can be no doubt as to the sincere, and even anxious, tone of these books. Here are writers who boldly

offer positive plans for action and freely speculate as to the future of current political and social developments.

Mr. Foster, the Communist leader, is convinced that the demise of capitalism shortly impends. Although the membership of the Communist party in America is now only about 15,000, it is felt that its influence reaches many more and that as the deepening capitalistic crisis extends, great *blocs* of the population—workers, farmers, negroes, and lower bourgeoisie—will be won over. Confidently, the author discusses the revolutionary tactics that will be successfully employed in building up a Soviet America after the Russian model and in accordance with the principles of Marx. The book is interesting as a definite statement of the political philosophy and aims of Communism in this country.

In striking contrast is the little volume by John L. Heaton, former associate editor of the *World*, which has nothing more horrendous to prophesy than another four years under the Hoover administration. Regarding as highly probable a Republican victory in 1932, the author urges all those of liberal tendencies to organize for action in 1936. All possible effort should be made to inject liberalism into one or both of the major parties, preferably the Democratic party. If this attempt fails, nothing remains but to organize a Liberal party.

Both Norman Thomas and Paul Douglas are in agreement that nothing can be expected from the two major parties. These organizations have become hopelessly plutocratic. A fresh start must be made, although these two writers are not in complete accord as to details.

The Coming of a New Party is an earnest and intelligent inquiry into the need of a change in the party alignment and the possibilities of successfully establishing a party through a union of the farmers, the workers, and the members of the low-income middle class generally. Although one might well question the possibility of such a combination in view of the factors that Stuart Rice called attention to some years ago in *Farmers and Workers in American Politics*, still an interesting case is made. The author admits that much depends upon the mental attitude taken by these classes. "They must be imbued," he writes, "with a passionate faith that government can be organized to enhance the fundamental worthwhileness of human life."

The immediate economic and social needs of labor, the exploitation of the farmer, and the interest of citizens as consumers are discussed at length. Douglas believes that working within the old parties is a futile task, and that a new line-up gives more promise of achievement. The difficulties involved in such an effort are considered, and the arguments against a third party are met one by one, skillfully if not altogether convincingly. Douglas refuses to be discouraged by the experience of the past or the great obstacles of the present, seeking in the promise of the future

faith and courage for his crusade. He finds satisfaction enough in the fascination of the process and the importance of the objects sought to warrant the endeavor. It is doubtful whether hard-bitten farmers and disgruntled laborers can be appealed to very widely upon such high grounds, although for these he has promises of material inducement.

The gist of his program is akin to that of Norman Thomas in that both urge further advance along the road to collectivism. Thomas is in agreement with Douglas that an increase in governmental activities and in social responsibility are demanded by the present emergency, although adhering strictly to the socialist program for the future. A comparison of their proposals for immediate relief indicates that a common working program is not impossible.

The imperative need of action and of organization is the refrain of Norman Thomas' little pamphlet. He presents here a particularly bald and straightforward statement of his views. Briefly put, the alternatives as Thomas sees them are Communism, Fascism, Socialism, or chaos. The present order is breaking down, immobility is impossible, a choice of paths must be made. Thomas concludes: "In this hour of crisis, to reject socialism is to accept years of bitter strife and unimaginable catastrophe."

To much of the criticism offered by these writers one can take little exception. Of the emergency reforms which they suggest, many must win acceptance. It is rather the predictions made and the expectations expressed that challenge credence. The book, *What We Are About to Receive*, is given over almost entirely to political forecasting. In such an undertaking one man's guess is about as good as another's, and hence the manner becomes perhaps of more importance than the content. Jay Franklin has a clever style, shrewd sense, and a sharp pen. His book is an amusing collection of somewhat cynical prognostications upon current issues.

If these books win the attention of the wide public for which they are intended in this presidential election year, they should provide the voter with something more fundamental to consider than the familiar battle between Tweedledum and Tweedledee.

E. PENDLETON HERRING.

Harvard University.

Development of the League of Nations Idea: Documents and Correspondence of Theodore Marburg. EDITED BY JOHN H. LATANÉ. (New York: The Macmillan Company. 1932. Two volumes. Pp. xvii, 886.)

Theodore Marburg was one of a group which in the early part of 1915 held a series of three dinners to work out a program for the avoidance of war. Their conclusions were the basis of the four-point platform of the

League to Enforce Peace, which from 1915 through 1919 developed an extraordinary and extremely efficient organization for selling an idea to its own country and the world. Mr. Marburg was throughout the chairman of its Committee on Foreign Organization, whose work was in the end more successful than that of the parent league, since its efforts committed statesmen who carried their governments with them. The present volumes contain Mr. Marburg's letters to American and foreign personalities, giving an intimate account of the way in which a conception of statecraft was made by private effort a central factor of world reorganization.

As a contribution to the history of the idea embodied in the present League of Nations, the volumes, as Mr. Latané edited them before his death, take rank as an original source. For political scientists in general, they provide a very complete and adequate record, a unique laboratory, for the study of what is now a familiar phenomenon—the organized education of the public and conscious forcing of governments around a new corner of international progress. Never has there been a fuller account of how legitimate propaganda does its work and gets its results. The process of the League to Enforce Peace taking the national bell-wethers into its flock, from the President down and clear across the country, can be perceived, though the correspondence tells that story indirectly. Its direct story is that of using this national record as a basis for parallel movements in other countries and the commitment of their officials. The correspondence presents the full details of the development of policy, the mechanism of inoculating foreign statesmen with the program whether they were disposed or indisposed toward it, and the steady growth of the major idea from an aspiration to a definitely written contract of nations.

Mr. Marburg, who had been minister to Belgium in 1912-14, was admirably adapted for the part he played, bringing to his task the advantages of wide acquaintanceship among statesmen and of understanding of how to approach officials effectively. The coöperation of Viscount Bryce was exceptionally close and helpful from early in 1915. After President Wilson made his favorable address in May, 1916 (by the way, he revised his text while listening to Senator Lodge's supporting speech) Mr. Marburg approached most governments through diplomatic channels. Switzerland on December 11, 1916, declared for the principle, and after that others followed, the list including the Allies as early as 1917. Another phase of the activity was preparation of a formal draft constitution of a league, on which there is much correspondence. The governments, of course, did not accept any text, but it is undoubtedly true that the efforts of Mr. Marburg and his colleagues insured a degree of positive support and an absence of actual opposition that materially contributed

to the preparation of the Covenant of the League of Nations at Paris. The Covenant is infinitely broader and much better than the League to Enforce Peace tentative draft (p. 791) which superseded a draft convention prepared by Mr. Marburg's committee (printed separately by Macmillan in 1918).

DENYS P. MYERS.

World Peace Foundation.

The Society of Nations: Its Organization and Constitutional Development. BY FELIX MORLEY. (Washington: Brookings Institution. 1932. Pp. xxii, 678.)

The author of this work offers a study of the origins of the Covenant of the League of Nations, the structure of the League today, and—to a certain extent—its activities, with particular reference to the evolutionary aspect of the situation. He does not, as the title might imply, treat of the international community outside of, or apart from, the League. The Secretariat of the League receives especially full treatment compared with the treatment usually accorded to that institution in this type of book, although both the Council and the Assembly are also given thorough discussion.

While Mr. Morley, who writes upon the basis of extended and intimate contact with the League machinery and practice in Geneva, presents a great deal of factual data, including bits of information not shared by all students of the League, it is in his interpretations of the facts or the situation as he sees it that students and readers will be most keenly interested. Such are his conclusions regarding what he calls the executive function of the Secretariat and what he regards as the growing dominance of the Assembly.

Upon such questions, as Sir Eric Drummond, now retiring secretary-general of the League, says in his foreword, there will be almost innumerable differences of opinion. It seems to the reviewer that, apart entirely from legal theory and logic, which would perhaps sustain Mr. Morley's conclusions in one of the questions just referred to and undermine them in the other, the analysis here presented exaggerates certain tendencies beyond their true proportions—it does not seem to him that the Secretariat has acquired, or can acquire, real power to commit the members or the League to any grave degree, now that the Assembly has acquired, or can acquire, power to control effectively the policies and actions of the Great Powers. But Mr. Morley is not presenting his conclusions as scientifically demonstrable to such degree that they can be regarded as established; this is not so much a scientific monograph as a general treatment for the general reader, whatever else it might have

been. For such differences of opinion, room is therefore deliberately left open by the author. It is, however, interesting to note that his attack upon the Council from the side of the Assembly is based upon good democratic morality, while that from the side of the Secretariat is based upon the doctrine of the expert. Altogether, the book is the most stimulating full-length discussion of the League in existence.

PITMAN B. POTTER.

Geneva, Switzerland.

The International Institute of Agriculture. BY ASHER HOBSON. (Berkeley: University of California Press. 1931. Pp. xi, 356.)

In spite of a certain prolixity coupled with an annoying discursiveness, this monograph impressively unravels the story of the failure of one type of international coöperation. In these latter years, there has been entirely too much romantic portrayal of the efficacy of international institutions as a means of facilitating intercourse amongst nations, without due consideration to the practical limits of their usefulness. There has been a failure to realize that no magic exists in the phrase "international organization." In fact, in some instances, as with the International Institute of Agriculture, its promotion has hindered rather than facilitated international understanding.

The particular value of this study exists in its emphasis on detail, its freedom from the use of a jargon which has too often encumbered treatises on international coöperation. Conceived by Lubin as a necessary device for the exchange of agricultural information among the nations, the Institute has degenerated into a petty struggle among the signatories of the treaty for diplomatic advantage; it exists as a means for furthering personal or national ambitions, and as an opportunity for playing a game of international "hide and seek."

Without exhausting the list, it is appropriate to inquire into the factors which are set forth by Dr. Hobson as having deprived the Institute of its usefulness. First, the personnel is made up, not of agricultural technicians, but of the diplomatic representatives of the member-nations accredited to the Italian government. Second, there exists a confusing uncertainty, resulting in constant friction, as to the exact jurisdiction possessed by the General Assembly, the Permanent Committee, and the General Secretary. Third, the administrative methods of the Institute place iron shackles on the initiative of the chiefs of bureaus and the technicians. This situation has arisen largely because of insistence by the president of the Permanent Committee that all of the work of the several bureaus must pass through his hands for approval, quite contrary, Hobson insists, to the intent of the treaty establishing the Institute. Fourth,

the efficiency of the statistical work of the Institute, the most important of its activities, has been destroyed because of "personal motives and national pride." Fifth, the domination of the Italian government in determining the policies, administration, and personnel of the Institute has largely destroyed its international value. Since the Italian government chooses its representative on the Permanent Committee, and since the Italian representative, by virtue of usage, is always chosen president, the way is open for the domination of the work of the Institute by one nation.

One of the most valuable sections of the monograph describes the relations existing between the League of Nations and the International Institute of Agriculture. The jurisdiction of various international organizations having to do with substantially the same subject is a little-charted field in the study of international coöperation. From Dr. Hobson's analysis, it is quite evident that no clear understanding between these two organizations exists on the most effective means by which they might co-operate with each other in dealing with the international phases of agriculture.

GEDDES W. RUTHERFORD.

Iowa State College.

A Manual Digest of Common International Law; with Theoretical and Historical Introductions and a Discussion of the Future of International Law. BY PITMAN B. POTTER. (New York: Harper & Brothers. 1932. Pp. xx, 284.)

For a dozen years, Professor Potter has been a professor of political science at the University of Wisconsin, teaching mainly international law and relations. Lately he has joined the permanent staff of the Institut Universitaire des Hautes Études Internationales in Geneva. His training, experience, and numerous publications have fitted him eminently to write this text.

No explanation is given for the use of the word "common" in the title. Presumably it is in opposition to the advocates of regional international law such as the distinguished Chilean publicist, Alejandro Alvarez. The preface is autobiographical. Part A deals with the theory of the subject. Several tenets are stated in categorical form without development or application, such as on page 16: "Strictly speaking, any rule accepted by two nations is 'international law'; between this rule and the rule accepted universally we have many gradations, and they all deserve the generic title." Another tenet occurs on page 66: "War does not alter all of the relations subsisting even between the enemy nations."

Part B sketches the history of international law, in thirty-five pages. Ten pages are devoted to the period up to 500 A.D. At the close, Professor

Potter states: "Such is the story of international law in the past three centuries. Such also is the story of international law in the past thirty centuries."

Part C, on international law proper, takes up the major portion of the book, sixty pages. The principles of international law have been embodied in two hundred and seventy-four propositions with pertinent footnotes referring to cases and documents, especially for the propositions dealing with the international law of peace. Professor Potter states that he has not attempted to draft the propositions with accuracy and finality. Rather, he has had in mind challenging the attention of the student and leading him to investigate for himself what the meaning of the proposition is and whether the mode of statement can be improved upon.

Part D contains a discussion of the future of international law. Professor Potter avows that partial codes of existing law will be hammered out in the next twenty-five years. He emphasizes that there is less reason for neglecting the law of war than the law of neutrality. "Neutrality may be obsolete," he states, "but military force may very well be employed, if only in the way of reprisals or measures short of war or intervention." Without giving any reason, he ventures that the institution of servitudes seems to lose ground more and more. In a rather sanguine manner, he reiterates that the law of war will be revised to apply only to military action short of war or to international police action.

Part E, the final one, includes documents in the form of codes of international law, especially the draft conventions of the Harvard Research in International Law, on nationality, the responsibility of states for damage done to the person or property of foreigners in their territory, territorial waters, piracy, competence of courts in regard to foreign states, diplomatic privileges and immunities, and the legal position and functions of consuls. There are included also two conventions signed at Havana in 1928 in connection with the Sixth International Conference of American States, on the status of aliens and on treaties. The Hague Convention of 1907 on the laws and customs of war on land and the laws of naval warfare from the Declaration of London in 1909 are also included. These documents alone would furnish a fruitful basis for a year's course in international law.

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A Charter for the Social Sciences. BY CHARLES A. BEARD. (New York: Charles Scribner's Sons. 1932. Pp. xii, 122.)

Dare the School Build a New Social Order? BY GEORGE S. COUNTS. (New York: The John Day Company. 1932. Pp. 56.)

Two men, prominent in the field of education and the social sciences, have recently allowed their names to appear in print attached to exceedingly thought-provoking discussions of what the schools can and ought to do with reference to promoting a higher social, economic, and political standard through their teaching.

The *Charter* is the first of a series of twelve or more publications to appear under the auspices of the Commission of the American Historical Association on the investigation of the social studies in the schools. Professor Krey's preface tells that it represents the consensus of opinion of the Committee, rather than the ideas of any one man. But if the voice is the voice of several, the hand is obviously the hand of Beard. The *Charter* is not a dry listing of minutely worked-out "objectives," but a setting forth of the conditions under which instruction in the social studies must be carried on in this country, and a suggestion of the general purposes of such instruction. These conditions are stated as follows: the requirements of scholarship, the nature of the social disciplines, the requirements set by the social realities of our times, the climate of American ideas, the framework of law and established programs, the requirements of the teaching and learning process, the supreme purpose in civic instruction. This purpose, among other things, is said to be to provide information, skills, habits, tendencies and propensities, attitudes or loyalties, will power and courage, imagination, esthetic appreciation, inspiration. The *Charter* is moderate in its claims as to what may be accomplished. "We must be on our guard against adopting the hasty opinion that the public schools can solve the problems of democracy, or at least prepare the way for easy solutions. . . . The schools are merely one agency for the development and distribution of knowledge."

Professor Counts' pamphlet is somewhat more positive. He declares that the schools have a right to impose on their pupils such ideals of social and economic relations as seem good. "If democracy is to survive," he says, "it must seek a new economic foundation." The control of the machine and the promotion of the welfare of the masses are two absolutely essential objectives. After determining how these ideals can best be approached, the schools ought to "impose" such ideals through their teaching, even though such a policy asks teachers to "assume unprecedented social responsibilities." The so-called "progressive" schools, Professor Counts thinks, have merely been playing with the idea.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

Walther Rothschild, of Berlin, has published a German interpretation of the struggle over the ratification of the Covenant of the League of Nations in America: *Vereinigte Staaten von Amerika, Versailler Vertrag und Völkerbund*, by Dr. Martin Löffler (pp. xvi, 143). There are two major errors which a German student of the problem treated in this monograph might be tempted to make: an exaggeration of the influence exercised in the United States against the Treaty of Versailles by provisions regarded as being unjust to Germany, and an exaggeration of the importance of the merits of the controversy concerning the League, as compared with the incidental partisan and personal aspects of the situation. Dr. Löffler avoids the first of these errors ("*Weinige dieser Artikel [27-440] spielten in Ratifizierungs Kampfeine Rolle,*" p. 97), but he falls into the second. From a reading of his monograph one would conclude that the defeat of the Covenant in the Senate resulted from opposition thereto, because of the provisions thereof, by the members of the Senate; in actual fact, an overwhelming majority—much more than two-thirds—of the members of the Senate were in favor of the Covenant in respect to all but two of its provisions (Arts. X and XXI), and on these two items not inability to secure reasonable compromise between the conflicting viewpoints of Lodge and Wilson, but arbitrary tactical interference by Borah and Johnson at a critical moment, with opposition to any and all idea of a League of Nations, explains the outcome. This Dr. Löffler suggests (p. 30), but he then goes on with more or less academic discussion of relations between various provisions of the Covenant and what he assumes to be traditional American foreign policy. In this comparison also he falls victim to two familiar errors—the idea that the United States had claimed a hegemony over Latin America in the name of the Monroe Doctrine (p. 106), and the idea that the United States had followed a policy of isolation in pre-war decades (p. 109). The present reviewer believes it absolutely impossible to demonstrate that this country ever actually professed or practiced any such principles, whatever some people or groups of people thought or said or desired in this direction; certainly neither principle could have had any real share in the defeat of the Covenant in January, 1920, in view of all the circumstances and personalities involved. Thus the present study emerges as a painstaking, well documented, and detailed analysis of what might be expected to be a profoundly interesting and significant episode in American diplomatic history and general international relations, but of a crisis which, because of the way in which and the grounds on which it

was resolved, turns out to have little general significance and hence not to justify the labor and interpretation bestowed upon it. The explanation explains too much. If this were all true, it would be impossible to understand imminent and already partially accomplished developments in American diplomacy. As for the suggestion that the American refusal to ratify the Covenant points to an attempt at world dictatorship (p. 138) on the part of the United States, it may be dismissed as *Gedankenspielerei* of the first water.—PITMAN B. POTTER.

Those who desire to learn more about the accomplishments of the modern Democratic party since the day of Woodrow Wilson, and its principles and program for solving present-day problems as expounded by a group of leading Democrats, will profit much by reading *Democracy at the Crossroads: A Symposium*, edited by Ellis Meredith (Brewer, Warren and Putnam, pp. 261). William A. Ayres, for sixteen years a member of Congress, outlines the legislative record of the party from 1914 to 1920; H. Parker Willis contributes an article on "The Federal Reserve Act;" Brand Whitlock, with his usual literary skill and art of description, writes of the American troops in Europe and what they meant to France; Newton D. Baker retells in brief space America's experience in the World War in an interesting article entitled "Democracy Goes to War;" the late Professor J. H. Latané writes of democracy as a world ideal; John W. Davis, in a chapter on "Imports and Amity," comments on the effects of tariff walls on business and on international good will and pleads for a more moderate tariff policy, as well as for a plan which will take the framing of tariff bills out of the hands of logrollers and lobbyists; and Senator Thomas J. Walsh contributes a discussion of the power question in which he concludes that "the electric light and power companies are taking a toll from the American people totalling tens, if not hundreds, of millions annually above a reasonable charge for the services they render and that the regulatory machinery provided by law to safeguard the public from pillage does not attain that end . . . the very existence of the prevailing system of private ownership and operation is at stake, and its continuance can be assured only by radical reformation of the business from within, or by drastic regulation from without." The other chapters include one by Huston Thompson, a student under Woodrow Wilson at Princeton and formerly a member of the Federal Trade Commission, which regards large industrial combinations as one of the great menaces to democracy, and which holds that the "road away from revolution" lies in checking and controlling the monopolist; an article with a somewhat similar theme by George L. Knapp on "Plutocracy and Poverty," which holds that the basic cause of the de-

pression is the over-concentration of wealth; an article by Senator Robert F. Wagner dealing with the government and unemployment; a paper on the problems and needs of the farmer, by Carl Vrooman, entitled "The Embattled Farmer;" and a vigorous attack by Senator Edward P. Costigan upon the development of a situation under which he alleges that the government and the economic life of the country have fallen under the control of a privileged few, together with a brief outline of the program which he proposes for reform. The volume closes with an essay by Claude G. Bowers on "Democracy: Its Past and Future." "The mission of democracy," writes Mr. Bowers, "is to serve man and not Mammon; to preserve political power in the people through the banishment of privilege. And this calls for a re-dedication of the nation to the Jeffersonian ideal of equal rights, to the Jacksonian hostility to monopoly and plutocracy; to the Wilsonian concept of social justice for all the sons and daughters of men." The authors of the articles in the latter part of the volume leave no doubt as to their belief that the only way to preserve democracy in this country is to entrust the government to the Democratic party.

Among recent books in American history which deal with subjects closely related to the field of government are (1) *The United States Since 1865*, by L. M. Hacker and Benjamin B. Kendrick (pp. xx, 775); (2) *A History of American Economic Life*, by E. C. Kirkland (pp. xv, 767), both of which are published by F. S. Crofts and Co.; (3) *From Frontier to Plantation in Tennessee*, by G. P. Abernethy (University of North Carolina Press, pp. xi, 392), an interesting study of early Tennessee politics in which the author reaches the conclusion that "democracy was never applied in politics but it was applied in things of the intellect," with the result that "the uncultured frontier accepted political leadership, but repudiated intellectual leadership and made one man's opinion as good as that of any other," thus "coarsening and cheapening our civilization"; . . . "the government remained in the hands of the few . . . concessions had to be made from time to time . . . the people were gradually given the semblance of power, but they lacked the substance of sovereignty, and the few still ruled the many . . . at first they did it through their personal prestige, then through the demagogue, and finally through partisan organization . . . it is now done through a combination of the party, the press, and the pulpit;" (4) *Southern Commercial Conventions, 1837-1859*, by Herbert Wender (The Johns Hopkins Press, pp. 240), describing a movement to establish the commercial independence of the Southern states which had a significant influence in arousing a "spirit of inquiry," and which "contributed largely to that con-

solidation of sentiment which led to secession," but which failed to accomplish its primary purpose because the "people refused to question the sanctity of slavery and the despotism of cotton"; (5) *Norfolk: Historic Southern Port*, by Thomas J. Wertenbaker (Duke University Press, pp. ix, 378), in which emphasis is placed on the history of the city down to 1880, with only an outline of recent developments; (6) *America in the Forties: The Letters of 'Ole Munch Raeder*, translated and edited by G. J. Malmin (The University of Minnesota Press, pp. xxi, 244), in which a Norwegian scholar who was sent to America by his government in 1847 to study the jury system records his observations of American institutions and customs, among which are comments on American democracy, the government of Wisconsin, and suggestions for a Scandinavian "United States" with a government modeled after the American constitution; and (7) *The Comte de Vergennes: European Phases of his American Diplomacy (1774-1780)*, by J. J. Meng (Catholic University, pp. 129), in which the author describes and evaluates the vital part which the great French foreign minister played in the phases of the diplomacy of the American Revolution "which dealt indirectly with the colonies and directly with the nations of Europe." The first-mentioned of the above list of books, that by Messrs. Hacker and Kendrick, is one of the best textbooks on recent American history that has appeared. It contains a large amount of useful background material for students of American government and politics, especially in the sections on party government and public affairs from 1871 to 1895, on expansion overseas, on Theodore Roosevelt and reform, and in section nine dealing with politics and the leading legislative problems of the nineteen-twenties. The authors have chosen very apt titles for the various parts of the book, such as "The Humbling of the Farmers," "The Emergence of Imperial America," and "The Golden Twenties." The style is above the average, and the publishers are to be congratulated upon the format of the book.

Essentials of American Government, by Frederic A. Ogg and P. Orman Ray (The Century Co., pp. 620), represents a condensation of the authors' well-known text, *Introduction to American Government*, the fourth edition of which, published in 1931, numbered 991 pages. An introductory chapter entitled "Government in a Twentieth-Century World" is all that remains of Part I dealing with the principles and problems of government, which was a distinctive feature of the earlier editions of the larger volume. Substantial reductions have been made in all sections of the book, a number of chapters have been combined, a new chapter on "Foreign Relations and National Defense" brings together material which formerly appeared in several places, footnote references and chap-

ter bibliographies have been sharply curtailed, virtually all charts and graphs have been omitted, certain portions have been rewritten, and new material has been introduced. Approximately the same proportionate allotment of space has been given to the several levels of government. In the main, the condensation has been effected without weakening materially the adequacy and clarity of treatment. For those who seek a briefer text and one in which primary emphasis is placed upon the presentation and explanation of factual data, leaving interpretation and philosophizing largely to the teacher, this abridged edition will have a decided appeal, as have the four previous editions of the more voluminous text.—LLOYD M. SHORT.

The success of Harold R. Bruce's *American Parties and Politics* (Henry Holt and Co., pp. vi, 589) as a college textbook is indicated by the fact that the publishers have issued a revised and enlarged edition. Professor Bruce describes in a readable and observing manner the history and rôle of political parties in the United States. Of particular interest at the present time are the chapters on the national convention, campaign methods and funds, and the direct primary. In spite of its shortcomings, the author favors the retention under adequate safeguards of "the time-honored national convention" as "a *real* American institution, of unquestioned importance to the vitality of the parties." In the chapter on campaign methods, particular attention is paid to the part played by modern publicity, propaganda, and "showmanship." Publicity and the development of an adverse public opinion are regarded as the ultimate remedies for excessive campaign funds. In regard to the direct primary, Mr. Bruce concludes that "there is likely to be much experimentation with various forms of pre-primary designation by party committees or conventions, and perhaps some form of party conference may be developed, but the direct primary appears to have arrived to stay, at least in principle." The concluding chapter on "The Citizen and Politics" is an essay for young men and women on the service of political parties, the value of participation in politics, and the great need in American life "that young men and young women of high ideals and resolute purposes for good government should devote themselves to public service."

In *Our Wonderland of Bureaucracy* (Macmillan, pp. xv, 272), James M. Beck presents "a study of the growth of bureaucracy in the federal government, and its destructive effect upon the Constitution of the United States." As might be expected from the author's previous writings, the growth of the federal government is viewed with alarm and em-

phasis is repeatedly placed "upon the lack of correspondence between the functions of many governmental bureaus and any discernable grant of power under the Constitution." It is this development that the author elaborates with a wealth of specific examples and pertinent statistics. The tremendous extent of the federal administration and the enormous expense involved in its support are depicted in a spirited and highly critical fashion. While arraying his evidence according to a thesis so emphatic as to be well-nigh prejudicial, the author has gathered much illustrative material of value. Though his concern is with the implications of federal centralization for constitutional law, it is suggested that the present work might more profitably be consulted for the information it contains upon administrative matters. Mr. Beck deplores the decline of constitutional morality and the sacrifice of constitutional principles to expediency and practical advantage. Bureaucracy is grimly stalked as a *bête noire*. The author's denunciation of bureaucracy would perhaps carry more conviction if based upon grounds other than his own interpretation as to the proper limits of authority under the Constitution. Those not seeing eye to eye with the author's rather restricted view of federal authority may be inclined to discount too readily the substantive knowledge regarding the national government which this study offers on many points.—E. P. HERRING.

One of the most interesting studies of the chief executive to appear in some time is the doctoral dissertation of Norman J. Small entitled *Some Presidential Interpretations of the Presidency* (pp. 208), issued in the Johns Hopkins Studies in Historical and Political Science. The powers of the chief magistrate in foreign relations, in war, in legislative leadership, and in the execution of the laws are examined with reference to the attitude taken toward them by five presidents, i.e., Washington, Jefferson, Lincoln, Roosevelt, and Wilson. It appears that the powers of the chief executive have grown by intermittent and sporadic steps, but that advances once made have added permanently to the presidential authority. The method of studying the presidency developed in this book is a revealing one that might well be carried further, even to an examination of the views of presidents less aggressive in extending the powers of their office. Mr. Small has ably demonstrated the value of studying the presidential office from the viewpoint of those so well qualified to speak, namely, the presidents themselves.—E. P. HERRING.

The Ratification of the Federal Constitution in North Carolina, by Louise Irby Trenholme (Columbia University Press, pp. 282), covers a somewhat broader scope than the title indicates, for it deals, although

with uneven emphasis and thoroughness, with the constitutional problems between 1781 and 1789. After a brief survey of conditions under the Articles of Confederation comes a careful study of the work of the North Carolina delegates in the Federal Convention. The bulk of the volume deals with the conventions of 1788 and 1789, the first refusing to ratify, the second ratifying, the Constitution. An interesting chapter on North Carolina's relations with the central government during the period when it was virtually an independent state, if technically one of the two members of the old Confederation, is interlarded between the discussion of the two conventions. There are two maps, an extensive bibliography, and a careful index.

The Costs of the World War to the American People, by John Maurice Clark (pp. xii, 316), published by the Yale University Press for the Carnegie Endowment for International Peace as one of the volumes in its series on the Economic and Social History of the World War, is not merely a study of the costs in dollars and cents, but also an analysis of the effects of the war on the economic life of the nation both during and after hostilities. In fact, over half of the volume is devoted to a discussion of such topics as the displacement of man-power, the toll of death and disability, relief and compensation, the war and agriculture, the war and the railroads, shipping, northern migration of negroes, munitions and other industries, etc. The effects of the war in enlarging our debt, in creating the problem of international debt, in producing a more tolerant attitude toward trusts and industrial combinations, and in developing "an increasingly stubborn insularity" are touched on in an attempt to strike a balance between gains and losses. Considerable attention is given also to post-war prosperity and the subsequent depression. "With every week that the present depression continues," writes the author, "the moral certainly increases that the effect of the war in deepening our depressions outweighs its conjectural effect in heightening our post-war boom; and that we have on the average been poorer since 1919 than we should have been if peace had continued."

F. S. Crofts and Co. has brought out a third edition of Robert E. Cushman's admirable *Leading Constitutional Decisions* (pp. xiii, 384). Four important new cases have been added, together with the usual explanatory comments: *Near v. Minnesota*, which contains the latest word on the freedom of speech and press; *Corrigan v. Buckley*, dealing with the protection of the negro under the Constitution; *Tyson and Bro. v. Banton*, which "emphasizes the growing importance and difficulty of the

question of what constitutes a business affected with a public interest;" and *Fox Film Corporation v. Doyal*, overruling a 1928 decision of the Court, which touches on the highly controversial subject of taxation of governmental agencies.

Two books of passing interest are *Samuel Seabury: A Challenge*, by Walter Chambers (The Century Co., pp. xii, 389), and *This Democratic Roosevelt: the Life Story of "F. D."*, by Leland M. Ross and Allen W. Grobin (E. P. Dutton & Co., pp. 312). Both biographies present the careers of their "heroes" in an informal, sympathetic manner. Mr. Roosevelt's life is presented in a laudatory, almost theatric, fashion that robs the book of balance and renders it little more than a "success" story. The account of Judge Seabury's career is useful because of the account presented of the recent investigation into New York City politics. Frequent use is made of the verbatim proceedings. Although this volume was published before Judge Seabury presented his final report to the governor, nearly two hundred pages of the book are devoted to the hearings.

STATE AND LOCAL GOVERNMENT

The Municipal Administration Service has added to its list of current monographs two studies which are more ambitious, and on the whole of more general interest to students of government and administration, than most of the previous booklets—*The Administration of Regulatory Inspectional Services in American Cities*, by Edna Trull (pp. x, 184), and *The Management of Small Municipal Lighting Plants*, by Frederick L. Bird (pp. iv, 145). The former study deals with a phase of public administration which has come to be of increasing importance, especially in the fields of public health, building, fire-prevention, weights and measures, etc., but one which in most cities has not received the attention it deserves. As the author concludes: "The unspectacular work of inspectors, in spite of its shortcomings and inadequacies, has been primarily responsible for the administration of the numerous laws passed in the interest of the general welfare. Proper recognition of this fact, through the provision of a personnel adequately trained, honest, and intelligent, supported by funds secured primarily through its own work and advanced by such public opinion as can be mustered through competently presented facts about its functions, will progressively serve to ameliorate the hazards of urban civilization." Mr. Bird's study is based upon an investigation of municipally owned lighting plants in fifty-one New York cities and villages varying in size from less than 1,000 to 45,000. The author concludes from his investigation of these plants, which are

sufficiently varied in size and conditions to be fairly typical of such undertakings in general, that "sound financing of capital requirements is probably their most universally outstanding accomplishment;" that "all of the plants studied are operating at a profit with the single exception of a small shore village with a population of thirty-nine;" that most of the plants "have been successful in effecting operating economies, in keeping their systems well maintained, and in rendering dependable service." He also found that continuity of administration had been secured through long tenure of administrative heads, and that plant management had been "kept free from political rotation in office." The chief shortcomings of the plants were the neglect of promotional business activity to increase consumption, and inadequate record keeping. The final chapter of the study, on "The Conditions of Successful Administration," contains not only a summary of the author's findings, but also an excellent summary of the standards and principles of administration which should be applied to obtain the maximum efficiency, a discussion of the legal limitations to successful municipal ownership, and an appraisal of public ownership as a regulator. Mr. Bird's current monograph and his earlier study of municipal ownership in California, *Public Ownership on Trial*, written jointly with F. M. Ryan, constitute the most reliable and fair-minded sources of information available on a subject which has generally been treated most unscientifically. A more technical statistical treatment of a similar subject is P. J. Raver's *Recent Technological Developments in the Municipally Owned Power Plant* (pp. vi, 86), published by the Institute for Research in Land Economics and Public Utilities. The author explains that until recently public capital has played a relatively small part "in the development or in the exploitation of the technical instruments" in the field of power generation, due partly to our individualistic society and in part to legal restrictions, but that a movement is now on foot "to bring public operation into direct and effective competition with the privately owned production machine." The movement aims at "recasting the legal framework to permit (1) formation of public power districts; (2) the inter-connection of municipally owned plants; and, in addition, (3) the avoidance of the state constitutional debt and other limitations on the establishment of municipally owned generating plants and distribution equipment." *Ownership and Regulation of Electrical Utilities in Great Britain*, by O. C. Hormell (pp. 12), reprinted from the *Annals of the American Academy of Political and Social Science*, explains how the British have attempted to solve the problem of controlling the electrical industry by "a bold experiment in coöperation between governmental agencies and private capital."

Rural Government: The Proceedings of the Fourteenth American Country Life Conference (University of Chicago Press, pp. viii, 164) contains a number of excellent articles on current problems of local government. The volume begins with an article by ex-Governor Lowden outlining the various problems, and one by Governor Franklin D. Roosevelt on rural planning. Professor Geddes W. Rutherford contributes a carefully prepared discussion of the traditions and principles underlying American rural government, while Professor Paul W. Wager outlines the changes that must take place if local self-government is to be preserved, the most important of which are the reconstruction of political units, a redistribution of governmental functions, and making rural government more visible and constructive. The necessary changes and reforms are discussed in greater detail by Howard P. Jones, of the National Municipal League, in a paper on "What Changes Should be Made in our Local Units of Government?," by Wylie Kirkpatrick in his paper on county management, with particular reference to experience in certain North Carolina and Virginia counties; by T. B. Manny in an article on "Government Structure, Powers, and Problems in the New Rural Municipality;" and by Arthur W. Bromage on "Functions and Powers of Village and Township Governments." Dr. John F. Sly answers the question whether the separate incorporation of rural villages is necessary and desirable by concluding that such practice "is, in most cases, expensive, inefficient, and out of line with modern methods, and is at best an unsatisfactory alternative to a properly integrated system of local government." Professor H. L. Lutz and Mark Graves, New York state tax commissioner, consider some of the factors and conditions which contribute to the high cost of local government and tax problems respectively. In the opinion of Professor Lutz, the chief causes of the high cost of local government are mal-administration, defective local governmental organization, an absence of effective means of expenditure planning and control, and an exaggeration of the home rule doctrine. Most of the other papers deal with various phases of administration in local areas and the relations between state and local units. Emphasis throughout is placed on the need for the simplification and coördination of local areas, the redistribution of functions, and the reorganization of internal governmental structure.

One of the most knotty problems in state government—the apportionment of state legislatures with particular reference to urban and rural representation—is dealt with in a report made by a special committee of the Board of Wayne County Supervisors on *The Michigan Plan: An Equitable Proposal for the Reapportionment of the Michigan State Legis-*

lature (Detroit, pp. 123). At the present time, population is the basis of representation in both branches of the Michigan legislature, with the result that the body is under rural domination. Approaching the problem in a fair-minded way, the report does not favor a reorganization which would make it possible for Detroit and Wayne county to gain control, but proposes a plan which would provide for a proper balance of the various sections and interests. It is proposed that permanent single-member districts be set up for the selection of senators, thus giving the rural sections control in that branch, while the members of the lower house should be apportioned on the basis of population. To avoid the difficulties which arise in many states, it is proposed that the duty of making the reapportionment of the lower house after each decennial census be assigned to the secretary of state rather than to the legislature, and that it be made possible to compel this officer by mandamus to act. In order that the bicameral system may produce the results intended, it is proposed that the members of the Senate be elected for longer terms than members of the House, and that only one-half retire every two years. The proposals are based not only upon a careful investigation of conditions in Michigan, but also upon a study of legislative structure in the other states of the Union. Other valuable features of the report are (1) digests of the constitutional provisions of the various states relative to legislative structure and apportionment; (2) the complete texts of these provisions; and (3) charts analyzing the provisions of the several state constitutions regarding legislative structure. Every teacher of state government should have access to this excellent report.

Principles of Local Government Law, by W. I. Jennings, legal editor of the *Local Government Chronicle* (University of London Press, pp. 263), is an exposition of the legal principles underlying the system of local government in England. Special emphasis is given to such subjects as the place of local government law in the general English legal system, the relationship between central and local authorities, the principles underlying the methods of obtaining new powers, and judicial control of local authorities. The book deals with that general part of local government law having to do "with the composition and control of the general administrative authorities and the methods of exercising functions," rather than with the "special part, dealing with the specific powers and duties of local authorities." Since the book is based upon a series of lectures given by the author at the University of Leeds and at the University of London, the approach is "definitely and deliberately academic," thus making the work of special value to the student of local

government who has not had legal training. It is one of the clearest expositions of a complicated subject that has yet appeared.

An example of economic and governmental planning at its best is found in a report of Governor LaFollette's special committee on land use and forestry entitled *Forest Land Use in Wisconsin* (Executive Office, Madison, Wis., pp. v, 156). Professor John M. Gaus served as secretary of the committee. The report describes the economic conditions that have resulted in Wisconsin from the removal of its timber wealth, proposes a program of land utilization for the cut-over regions, and outlines a plan whereby the activities of all of the federal, state, and local agencies having to do with forest and land problems may work in coöperation toward the solution of the problem. It is this latter phase of the report which will naturally prove of greatest value to students of government, because it emphasizes the importance of coördinated effort on the part of the administrative agencies of different governmental units in dealing with many of the complex problems of modern government. The survey is an outgrowth of the executive council, or planning committee, for the state which was appointed in 1931 under legislative authorization to bring together the governor and representatives of the legislature and of various basic industries for "the discussion of state problems and policies with the hope that a more comprehensive and better coördinated knowledge of and attack upon these problems might be secured" (see pp. 914-920 above).

Special Assessments in Detroit, by George A. Graham (University of Illinois Studies in the Social Sciences, Vol. XVII, Nos. 3-4, pp. 318), is more than a local study. The introduction discusses such subjects as the uses and nature of special assessments and the legal problems involved in this form of taxation, while the second chapter contains an interesting analysis of the relation of special assessments to the taxing system, with special reference to the conflict between the benefit and ability principles. Throughout the study much attention is given also to the formulation and application of principles involved in special benefit and to the problems of administration. In fact, at least half of the volume is devoted to a consideration of general principles and methods. In the opinion of the author, "the special assessment can be justified only when special benefits are clear and material. . . . The determination of whether clear and material benefits actually do or will exist is an administrative task, and is the heart of the special assessment problem." The study was written before the recent economic crisis had developed;

hence the author does not touch upon the effects of depression upon the workings of special assessments.

At the present time, the relation of state tax systems to local tax systems is of special significance, not only because of the widespread movement toward greater centralization, but more particularly because of the fact that local governments during the current economic depression have found themselves hard pressed for revenue—a problem which has become more acute due to the fact that the state has taken over many of the taxes which were formerly a part of the local property tax. Miss Ruth G. Hutchinson has considered an important phase of this problem in her careful study and analysis, *State Administered Locally-Shared Taxes* (Columbia University Press, pp. 157). The most important of the taxes considered are corporation taxes, inheritance taxes, the motor vehicle tax, income taxes, and forest and severance taxes. There is also a chapter on state-administered, locally-shared taxes abroad. The study is of particular importance to students of government because the author has emphasized the effects of the increased number of locally-shared taxes on the relations between state and local governments and gives much attention to the development of centralization in state tax administration. The relative merits of locally-shared taxes and subventions are touched on.

A large amount of useful illustrative material for courses in municipal government and administration regarding the problems of a small city is found in Luther Gulick's *Modern Government in a Colonial City* (Jonathan Cape and Harrison Smith, pp. vii, 258), which is a survey of the city government and finances of Williamsburg, Virginia. This is especially true of Chapter I, outlining the present city government; Chapter II, which outlines the current problems and recommends a ten-year financial plan and budget; Chapter IV, dealing with tax assessments; and Chapters V and VI on debt policies. Mr. Gulick has throughout the study drawn upon his wide experience in making municipal surveys, and a most valuable feature of the book is the emphasis upon principles and methods of administration which are applied to the solution of concrete problems.

The third volume of *The Minnesota Year Book, 1932* (pp. 260), edited under the joint auspices of the League of Minnesota Municipalities and the Municipal Reference Bureau of the University of Minnesota, of which organizations Dr. Morris B. Lambie is the executive secretary and chief of staff, respectively, maintains the high standard of the earlier volumes. Although intended especially for officials and citizens of the

state of Minnesota, the work contains a wealth of information and illustrative data for students of state government throughout the country. It should also furnish a model for other states to follow.

FOREIGN AND COMPARATIVE GOVERNMENT

Between 1678 and 1707, William Blathwayt occupied a number of administrative positions, the chief being secretary at war, clerk of the council, and auditor-general of plantations revenues. Somewhat more than what we should today call a civil servant, he was nevertheless always a subordinate; nor was he a man of genius or personal distinction. But on the basis of a careful accumulation of information about his official life, Dr. Gertrude Ann Jacobsen presents him as representative of the English administrators of his time in her recent study, *William Blathwayt: A Late Seventeenth Century English Administrator* (Yale University Press, pp. xiii, 508). Three chapters in the volume—those on Whitehall, administrative methods, and “emoluments of office”—are especially illuminating to the student of administration. Blathwayt’s career fell in the crucial post-Restoration period when the modern system of English government was being inaugurated, and when administration was passing out of the hands of a rather personal and political privy council into the hands of permanent administrative bodies and officers. Miss Jacobsen makes a fascinating analysis of the situation in which public offices were still looked upon as private property which could be bought and sold, and yet accounting systems, filing systems, and other standardized procedures were beginning to be used. She has an interesting description of the practice of taking fees for official activities. —E. P. CHASE.

Political Handbook of the World; Parliaments, Parties, and Press as of January 1, 1932 (Yale University Press, pp. 200), edited by Walter H. Mallory and published under the auspices of the Council on Foreign Relations, is the latest issue of an annual volume which has become indispensable to scholars, writers, and editors concerned with current political affairs. The most useful features of the manual are the lists of political parties, with their leaders and programs, and of newspapers, with political affiliations and names of editors or proprietors. The latter list is planned to include mainly papers that are frequently quoted abroad, omitting some of large circulation and large influence locally.

Professor M. N. Pokrovsky’s *History of Russia: From the Earliest Times to the Rise of Commercial Capitalism* (International Publishers, pp. xvi, 383), translated by J. D. Clarkson and M. R. M. Griffiths, in-

cludes considerable material on government and early methods of administration in its chapters on "Primitive Society," "The Formation of the Muscovite State," "Russia of the Nobles" (especially the section which describes the decline of the "*zemsky* [autonomous] principle" in local government and its replacement by the "*prikaz* [bureaucratic] principle" (pp. 240-256), and "The Reforms of Peter," especially the section on "The New Administrative Machinery" (pp. 289-307).

Bolívar: A Contribution to the Study of his Political Ideas, by C. Parra-Perez, translated by Professor N. A. N. Cleven, of the University of Pittsburgh (Pittsburgh Printing Co., pp. 198), is a laudatory account of Bolívar's constitutional system, diplomacy, and dictatorship, and of the theories which influenced and shaped his actions. The author regards his hero, rather than Monroe, as the originator of the idea that America should be freed from all European colonization and intervention.

Ernest Woods, who has spent thirteen years in India and was formerly principal of the Sind National College, has written an exhaustive reply to Miss Katherine Mayo's *Mother India*, in a bulky volume of four hundred and seventy-five pages entitled *An Englishman Defends Mother India* (Ganesh and Co., Madras). Mr. Woods expresses the opinion not only that Miss Mayo's book was based upon superficial observation and a brief acquaintance with the country, but that she also picked out the worst examples. The author favors dominion status for India.

INTERNATIONAL LAW AND RELATIONS

Henry Kittredge Norton last year made a journey round South America under the auspices of the Carnegie Endowment for International Peace. He followed what in recent years has become the "grand tour," visiting the capital cities of Peru, Bolivia, Chile, Argentina, Uruguay, and Brazil. *The Coming of South America* (The John Day Co., pp. 300) is the result. It discusses political revolution and economic depression, United States trade and investment, and the attitude of South American countries toward one another and toward the United States. The volume offers little that is new, by way of fact or interpretation, and much that has appeared in other recent books which deal with such matters.¹ The author's main thesis is that "the Latin-American generalization," as he calls it—the habit in this country of lumping together all the Latin-American nations indiscriminately without any appreciation of the diversities in racial composition, present development, and future prospects—

¹ Notably J. F. Normano, *The Struggle for South America* (1931), and C. H. Haring, *South America Looks at the United States* (1928).

is becoming an anachronism. It has long been an anachronism, and the circumstance has often been remarked before. The past history of these countries in which the author feels called upon to indulge is generally sketchy and impressionistic, and the present "politics" not much better. The longest chapter (80 pages), devoted to the South American revolutions of 1930-1931, contains many misstatements. A more accurate story may be obtained from the files of the *New York Times*. To attribute the depression in the tin-mining industry of Bolivia to the slackened demand for canned food in the United States following the financial catastrophe of October, 1929, is picturesque at least. All of which goes to show once more that a single sojourn of five or six months on the southern continent does not warrant rushing into print as an authority on Latin-American affairs. The facile style and easy generalization of the professional journalist will recommend this book to a popular audience. It will serve a purpose in helping to dispel the cloud of ignorance of Latin-American countries which still hangs about us. For the reader familiar with the literature on the subject, it is negligible. The reviewer wonders why a somewhat inaccurate Spanish translation of the book's title intrudes itself upon the title page.

Speeches on Foreign Affairs, 1904-1914, by Sir Edward Grey, edited by Paul Knaplund (Harvard University Press, pp. 327), is a work which will be welcomed by students of international relations. Statesmen's speeches are the raw material out of which public opinion is formed, and their careful study is essential to an intelligent understanding of mass outlook. Although almost always adequately reported, they unhappily lie buried in back files of newspapers and in forbidding official collections, both zealously guarded by well-meaning librarians, and are, therefore, quite inaccessible to the average individual. It is only when separate publication in convenient book form is arranged, as in this case, that general and efficient use can be made of them. The volume under consideration consists of seventeen speeches delivered before the House of Commons and five in various English cities, as well as two answers to questions given in the lower chamber, all extracted from the *Parliamentary Debates* and the *Times*. While brought out with Lord Grey's permission, the editor enjoyed a free hand in choosing them and there was none of that unfortunate "correction" by the speaker, made years after delivery and often distorting original points of view, which mars so many Continental offerings of such a nature. The selection has been made with great care to cover the most important aspects of British foreign relations in the pre-war decade. The Entente Cordiale, the Anglo-Russian Convention, the Near Eastern Question, foreign trade, and naval

strength are the chief subjects dealt with. The famous speech of August 3, 1914, announcing that Great Britain could not assume a position of unconditional neutrality because of her commitments to France, on which the Foreign Secretary's political future hinged, is in many ways the outstanding one of the group. The editor has shown his skill in handling material of this type by withdrawing almost completely from the scene. Save for a brief preface and pleasing introduction, Grey is permitted to speak for himself.—L. J. RAGATZ.

Two recent additions to the ever-growing volume of literature on China and international relations in the Pacific are *The Capital Question of China*, by Lionel Curtis (Macmillan, pp. xix, 322), and *Problems of the Pacific, 1931: Proceedings of the Fourth Conference of the Institute of Pacific Relations, Hangchow and Shanghai, China*, edited by Bruno Lasker (The University of Chicago Press, pp. xi, 548). The author of the first of these books (one who has studied international questions with care) makes a valiant effort to arouse Westerners generally, and the British in particular, to a realization of the major importance of China and of the significance of the condition of China to the "whole structure of human society." In connection with this primary purpose, the effort is made to explain the indifference usually shown to the subject of China. In addition, a summary of the historical background is given. The book gives a convenient summary of all the recent events that center around China. The author is to be commended for adding an historical survey. This survey, however, should have been made longer, for China today can be explained only by China in the past, and of that past practically all westerners are almost completely ignorant. The author does not realize that the confusion in China, the inability to organize a unified, controlling government, is due to the fact that the mass of the people have yet to gain a sense of their relatedness in the huge social group of a nation of 400,000,000 people. Such a sense is growing everywhere in China, and is far more important for the solution of the China question than the author's own, namely the appointment to China as British minister of "a public man whose estimates of the facts and methods of handling the facts will convince Parliament and the public opinion it represents." The second book is a book of reference material, containing the "data papers," references, speeches, and discussions of the Fourth Conference of the Institute of Pacific Relations. The material is classified under five topics: Economic Relations, China's Economic Development, Political Relations, China's International Relations, and Cultural Relations in the Pacific. A variety of opinions and of evidence regarding the points discussed is presented which forms a valuable experiment in the

discussion or conference method by which our world is gaining a better understanding of itself as its thoughts eddy about a major problem vortex in human relations. It is significant that this particular conference could be held at the very time when the action of Japanese militarists in Manchuria was creating a radical patriotic response in China. The Conference demonstrated that the leading minds of China and Japan are concerned about solving their problem in terms of mutual welfare. The section on Cultural Relations is of particular interest, since cultural contacts and exchanges mean a common cultural background for the world of tomorrow.—L. C. PORTER.

In the form of a debate between Dr. Raymond L. Buell, in the affirmative, and Professor John Dewey, in the negative, the main issues of a most complex problem are dealt with in a small booklet entitled *Are Sanctions Necessary to International Organization?*, published by the Foreign Policy Association (pp. 39). Both sides find proof of their case in the recent Japanese venture in Manchuria and Shanghai. Mr. Buell effectively argues down the stock "no-sanctions" contentions; he points out the weakness of ineffective substitutes for coercive sanctions, especially the inadequacy of "moral pressure" and "non-recognition;" and he supports the view that "just as force is a necessary corollary to law in domestic society, so force must become a necessary part of any international machinery for the prevention of war, if this machinery is to achieve its end." It is an orderly and persuasive argument, well bolstered by some of the most obvious lessons of history. Professor Dewey rambles over a vast field in his attempt to show that the use of sanctions is both impracticable and undesirable; impracticable, because he does not believe in the deterrent effect of either economic or military sanctions, since it is difficult to determine in a given case the aggressor; undesirable, because international sanctions to him smack of war on a grander scale than ever. His remedy for the present anarchy of international relations is moral pressure, expressed in a general adoption of the non-recognition policy of Mr. Stimson's note of January 7, 1932, and supported by public opinion. Concretely, he suggests that adherence of the United States to the World Court would aid in the enlightenment of public opinion and unification of the moral judgment of the world. Fortunately, both sides are nearly wholly right and reciprocally admit it. Mr. Buell concedes that organization of coercive sanctions is for the moment impracticable but that the fact is irrelevant; Professor Dewey concedes that "peace-sanctions," pressure short of force, are really necessary after all. A prerequisite of the debate should have been a definition of "sanctions" agreed upon in advance.—A. E. HINDMARSH.

The study presented in *Bryan and World Peace*, by Merle Eugene Curti (Smith College Studies in History, Vol. XVI, Nos. 3-4, pp. 111-262), is one of absorbing interest. It seems to be thoroughly and carefully done, and it covers, in systematic fashion, Bryan's initial personality and ideology, his attitude toward the war with Spain and the Treaty of Paris, his peace treaties of 1913-1915, and finally his attitude toward the war with Germany and the Treaty of Versailles. The book is well documented and well written. The writer does not, however, appear to have adopted any standard by which to evaluate Bryan. To the observer, Bryan seems to have been either a saint and a sage or a knave and a fool; perhaps the elements were so mixed in him that he must be said to have been something of all four, and the author's course is not only the wisest but the only one which the student can safely adopt, even if it does seem to leave him with a confused impression.—P. B. POTTER.

The pamphlet, *Conflict in the Far East*, by the Staff of the American Council, Institute of Pacific Relations (pp. 47), contains an analysis of the Sino-Japanese conflict, with emphasis upon the bases of American interest, the course of events in the controversy, its underlying causes, the action of the League and the United States, and proposed forms of remedial treatment. In spite of traces of that type of smartness which produces error and not truth, e.g., second paragraph on page 42, the presentation is concise, systematic, and sound.

Die Grundbuchfähigkeit des Völkerbundes, by Dr. Max Schröder (Dr. Walther Rothschild, Berlin, pp. xiv, 84), presents a scholarly study of the legal liabilities and rights of the League of Nations as a juristic person, and its relation to private law, especially in its capacity as a property-holder.

Egidio Reale, an Italian lawyer, who practices before the Italian Court of Cassation, has written a study of the arbitration of the Alabama claims under the title: *Le Règlement Judiciaire du Conflict de l'Alabama* (Librairie Payot and Cie, Lausanne, pp. 141).

The University of Chicago Press has published for the American Council of the Institute of Pacific Relations *An Introductory Syllabus on Far Eastern Diplomacy* (pp. 40), compiled by Harold S. Quigley, and intended as a tool for teachers in school and college.

POLITICAL THEORY AND MISCELLANEOUS

Sir Josiah Stamp, author of *The Financial Aftermath of War* (Scribner's, pp. 149), has played a large part in formulating and administering

the war and post-war fiscal system of Great Britain, and by virtue of his contributions to the Dawes Plan he helped give the world temporary relief from the vexatious problem of reparations. This volume is a series of lectures which Sir Josiah delivered to the general public and to students without any economic knowledge, giving them the opportunity to grasp the essentials of many of the vital economic problems that have harrassed the world in the last fifteen years. He goes beyond the A B C of such difficult problems as the capital levy, the processes of inflation and deflation, and capacity to pay; and yet all is presented in a manner so concise and lucid that the uninitiated students must have found their economics less puzzling than many of their simple algebraic equations. Even trained economists can profit from a reading of this book. Who has summed up the problem of reparations more tersely and more effectively than Stamp? "The whole history of reparations has been a fight by the politicians to get paid, and a fight by the industrialists to prevent themselves being paid." Or consider his conclusions concerning the capital levy: "At the same time, we are bound to see that if a levy could have been imposed when prices were at their highest, if it could have been valued and collected quickly before prices fell, and if it could have been applied to the repayment of debt, without causing a collapse of credit—if these several things could have been done, then it would have been an excellent thing to pay off the debt while prices were high, and thus save the increasing burden as prices fell. But the technical difficulties were too great, and time was of the essence of the contract, while the movement of prices was exceedingly rapid."—S. E. HARRIS.

Gold and Monetary Stabilization (The University of Chicago Press, pp. xiv, 174) consists of four lectures delivered at the University of Chicago under the Harris Foundation, together with a final paper contributed by Professor John H. Williams, of Harvard University. The volume is edited by Professor Quincy Wright. In the first address on International Aspects of the Gold Standard, Professor Jacob Viner traces the tortuous course of the gold standard in England before the war and asserts that constant management was required for its operation. The outcome of the gold standard since the war remains uncertain. In fact, the time is ripe for a cautious attempt to stabilize the price level on a managed currency basis. Dr. Gottfried Harberler treats the inadequacy of the various "monetary theories" of the business cycle and stresses the maladjustment of income as applied in the varying processes of production. Professor H. Parker Willis criticises the Federal Reserve policy of the past few years and holds that its results have "usually been injurious because of their influence upon the redistribution of gold reserve." Dr.

Lionel D. Edie believes that the world will return to a gold basis of exchange provided that the United States will so alter the Federal Reserve mechanism as to protect the dollar from "irrational excesses." Professor Williams maintains that while we should not abandon gold as a standard, we must have credit control by management. There must be closer coöperation of central banks, probably through management of a supernational character.—T. R. SNAVELY.

Some recent books and pamphlets on economics which touch on subjects of more than passing significance for students of government, but of which space permits only brief mention, are (1) a scholarly work on *American Economic Thought in the Seventeenth Century*, by E. A. J. Johnson (P. S. King and Son, London, pp. xi, 292), which contains interesting chapters on "The Condemnation of Communism" in the utterances of such men as John Winthrop, Bradford, Cotton, and Roger Williams, and on "The Support of Government"; (2) *The Netherlands and the World War* (pp. x, 226), which is volume four of the Studies in the War History of a Neutral published by the Yale University Press for the Carnegie Endowment for International Peace, and containing an analysis of "The Effect of the War upon Banking and Currency," by Dr. G. Vissering and D. J. W. Holstijn, and "War Finances in the Netherlands, 1918-1922: The Costs of the War," by Dr. H. W. C. Bordewyk; (3) a 1931 supplement to D. P. Locklin's *Railroad Regulation Since 1920* (McGraw-Hill Book Co., pp. 31), dealing with the decisions of the Supreme Court in the O'Fallon and Ann Arbor Railroad cases, and the final plan of railroad consolidation promulgated by the commission; (4) *The Federal Anti-Trust Law*, by Charles W. Dunn (Columbia University Press, pp. 45), containing two lectures delivered at Columbia University in which the author concludes that the Sherman Anti-Trust, the Federal Trade Commission, and the Clayton acts are "in harmony with the traditional legislative policy of a free government," since they leave business "free to develop and take care of itself" by forbidding unfair methods of competition; and (5) *Die Ursachen der Krise*, by Felix Somary (J. C. B. Mohr, Tübingen, pp. 122), containing a dozen more or less popular articles on the causes of the present world-wide economic crisis from the German point of view.

The Commerce Clearing House Incorporated, of Chicago, has published a useful compilation of *Federal and State Tax Systems* (pp. 145), prepared by M. S. Howard under the direction of the New York state tax commission. The handbook contains charts analyzing in detail the tax systems of the federal government and of each of the forty-eight states;

charts of the tax systems of seventeen foreign countries, with special reference to jurisdictions that have attempted to market large bond issues; and tables indicating the status of certain kinds of taxes in the various states, such as bank taxes, chain store taxation, income taxes, inheritance taxes, motor vehicle fees, gasoline taxes, sales taxes, property taxes, etc. There is also a chart describing the organization of state tax commissions, and tables showing the tax collections in the several states for 1930. Each chart has been prepared by the person or organization most familiar with the state's tax system or with the special type of tax under consideration. The handbook is published in loose-leaf form, and it is proposed not only to keep it up to date but to expand its scope by including condensed histories of taxation in the more important jurisdictions, charts of the tax systems which leading authorities think we should have, a model state and local tax system, a summary of the principles of taxation, and other important data. This handbook is especially timely and should serve a most useful purpose.

The Decline of the I.W.W., by John S. Gambs, is published by the Columbia University Press (pp. 268). This account treats of the factors which since 1917 have changed the organization from the active and articulate industrial union it was to the innocuous band it is. "Members with constructive suggestions for change and adaption to post-war conditions are not encouraged to express their opinions. Inflexible, dogmatic, fatalistic—that is the I.W.W. today. Unless the organization changes, it may not survive at all." Of particular interest are the chapters discussing the relations of the I.W.W. with Communism, with the American labor movement, and with the public generally. The reader obtains the impression that Mr. Gambs writes from a close knowledge of I.W.W. literature and direct contact with those in the movement.

Recent books dealing with rural life and its problems include *Principles of Rural Economics*, by T. N. Carver (Ginn and Co., pp. xxiv, 401); *The Rural Community* by Dwight Anderson (Ginn and Co., pp. ix, 723), which contains much useful sociological background for students of local government, especially in the parts on political organization, social institutions and social control, and the modern agricultural village; and *The Awakening Community*, by Mary Mims, with an introduction by Charles W. Pipkin, of Louisiana State University (Macmillan, pp. xxvii, 273), in which the author tells of community work which has been done in various Louisiana villages and gives outlines of concrete programmes.

A revised edition of *A Guide to the Study of Medieval History*, by L. J. Paetow (F. S. Crofts and Co., pp. xvii, 643), contains numerous references to constitutional history and also useful bibliographical material on canon and Roman law and on political thought. References on the latter subject are classified under such headings as conceptions of the nature of law and of the relation of law to the state; medieval ideas of sovereignty; ideas of the relation of temporal and spiritual power; ideas of a world state; political theories of St. Augustine, John of Salisbury, St. Thomas Aquinas, Dante, etc. This section was prepared by John Dickinson.

Alexandre Gorovtseff, formerly of the University of Perm, in Russia, has issued the first part of his *Etudes de Principiologie du Droit* (E. de Boccard, Paris, pp. 98), which deals with the various theories as to the purpose of the law.

RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CHARLES M. KNEIER AND CHARLES S. HYNEMAN

University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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